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Attorneys for **Appellee**

UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In Re: **FRANCIS J. LOPEZ,** Debtor. ____________________ **FRANCIS J. LOPEZ,** Appellant, v. **ALAN STANLY,** Appellee.	Case No. 05-05926-PB7 APPEAL NO. 2 **APPELLEE'S SUPPLEMENTAL RECORD ON APPEAL** **[VOLUME 3 OF 9]** Judge: The Honorable Peter W. Bowie Ctrm: 4

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DOCKET NUMBER 34

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Attorneys for Petitioning Creditor
ALAN STANLY

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re:

FRANCIS J. LOPEZ, an individual,

Alleged Debtor.

Case No. 05-05926-PBINV

Involuntary Chapter 7

ERRATA TO MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION BY ALLEGED DEBTOR FOR AN ORDER BIFURCATING TRIAL RE INVOLUNTARY PETITION; SETTING DEADLINE TO ADD NEW PETITION CREDITORS; AND REQUIRING THE POSTING OF A BOND

Date: December 19, 2005
Time: 10:00 a.m.
Judge: Hon. Peter W. Bowie
Dept.: Four (4)

Petitioning Creditor, Alan Stanly, respectfully submits this Errata to Memorandum of Points and Authorities in Opposition to Motion by Alleged Debtor for an Order Bifurcating Trial re Involuntary Petition; Setting Deadline to Add New Petition Creditors; and Requiring the Posting of a Bond.

The Table of Authorities was inadvertently omitted from the Memorandum of Points and Authorities in Opposition to Motion by Alleged Debtor for an Order Bifurcating Trial re Involuntary Petition; Setting Deadline to Add New Petition Creditors; and Requiring the Posting of a Bond.

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The Table of Authorities is attached hereto and incorporated herein by this reference as Exhibit "A".

Petitioning Creditor apologizes for any inconvenience this inadvertent omission may have caused the parties or the Court.

Dated: December 6, 2005

ROBBINS & KEEHN
A Professional Corporation

By: //s// L. Scott Keehn
L. Scott Keehn
Charles F. Robbins
Sarah H. Lanham
Attorneys for Petitioning Creditor
Alan Stanly

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EXHIBIT A

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Federal Rule of Bankruptcy Procedure 8

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DOCKET NUMBER 34-1

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Attorneys for Petitioning Creditor
ALAN STANLY

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, an individual, Alleged Debtor.	**Case No. 05-05926-PBINV** **Involuntary Chapter 7** **PROOF OF SERVICE** **Date:** December 19, 2005 **Time:** 10:30 a.m. **Judge:** Hon. Peter W. Bowie **Dept.:** Four (4)

I, the undersigned, declare, that I am over eighteen years of age and not a party to this action. I am employed in, or am a resident of, the County of San Diego, California, and my business address is: Robbins & Keehn, APC, 530 B Street, Suite 2400, San Diego, California.

I caused to be served the following document(s):

ERRATA TO MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION BY ALLEGED DEBTOR FOR AN ORDER BIFURCATING TRIAL RE INVOLUNTARY PETITION; SETTING DEADLINE TO ADD NEW PETITION CREDITORS; AND REQUIRING THE POSTING OF A BOND

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[ ] BY PERSONAL SERVICE. I placed a true copy of the above-named document(s) in a sealed envelope clearly labeled to identify the party being served, and personally caused said such envelope to be personally delivered on each addressee named hereafter:

[X] BY MAIL. I declare that I am readily familiar with this business's practice for collection and processing of correspondence for mailing with the United States Postal Service, that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business; and that I enclosed a true copy of the above-named documents in a sealed envelope or package, with postage thereon fully prepaid, for each addressee named hereafter:

M. Jonathan Hayes
Law Office of M. Jonathan Hayes
21800 Oxnard Street, Suite 840
Woodland Hills, CA 91367
Telephone No.: (818) 710-3656

United States Trustee
402 West Broadway, Suite 600
San Diego, CA 92101-8511
Telephone No.: (619) 557-5013

[ ] BY OVERNIGHT DELIVERY. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

[ ] BY FAX TRANSMISSION. Based on a court order or an agreement of the parties to accept service by fax transmission, I faxed a true copy of the above-named documents the persons at the fax numbers listed below, and that the transmission was reported as complete and without error. A copy of the record of the fax transmission, which I printed out, is attached.

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[ ] BY E-MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused a true copy of the above-named documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on December 6, 2005.

//s// Sara C. Freeman

SARA C. FREEMAN

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DOCKET NUMBER 35

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

Minute Order

Hearing Information:

Debtor:	FRANCIS J. LOPEZ
Case Number:	05-05926-PB7 **Chapter:** 7
Date / Time / Room:	MONDAY, DECEMBER 19, 2005 10:30 AM DEPARTMENT 4
Bankruptcy Judge:	PETER W. BOWIE
Courtroom Clerk:	MARCIA PEARSON
Reporter / ECR:	LYNETTE ALVES

Matters:

1) ALLEGED DEBTOR'S MOTION FOR ORDER BIFURCATING TRIAL; SETTING A DEADLINE TO ADD NEW PETITIONING CREDITORS AND REQUIRING A BOND

2) STATUS CONFERENCE ON INVOLUNTARY PETITION AND ANSWER (fr. 11/29/05)

Appearances:

M. Jonathan Hayes, ATTORNEY FOR Francis J. Lopez
L. Scott Keehn, ATTORNEY FOR ALAN STANLEY

Disposition:

Bifurcation granted as to number of creditors; bond request withdrawn
1) & 2) Hearings continued to 1/23/06 @ 10:30 a.m.

DOCKET NUMBER 36

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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In re: FRANCIS J. LOPEZ, Alleged Debtor.	CASE NO. 05-05926-PBINV Involuntary Chapter 7 NORTHWEST FLORIDA DAILY NEWS' JOINDER IN INVOLUNTARY PETITION FOR FRANCIS J. LOPEZ Dept.: Four Judge: Hon. Peter W. Bowie

Northwest Florida Daily News ("Petitioner"), creditor of alleged debtor Francis J. Lopez, ("Lopez"), hereby joins the Involuntary Petition filed by Alan Stanly commencing the above-captioned case, and in support thereof states:

1. Petitioner maintains a principal place of business at NORTHWEST FL DAILY NEWS. Petitioner is owed $ 69.30 by Lopez as of the date hereof (the "Claim"). The Claim is for ADVERTISEMENT + SUBSCRIPTION. Petitioner did not acquire its Claim by transfer from another entity.

COPY

2. Petitioner's Claim is non-contingent and not subject to a bona fide dispute as to its existence, nature or amount.

3. Petitioner requests that an order for relief be entered against Lopez under Chapter 7 of Title 11 of the United States Code.

4. Petitioner declares under penalty of perjury that the foregoing is true and correct according to the best of its knowledge, information and belief.

Dated: 12-20-05 By: Eleanor Hopes.

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, an individual, Alleged Debtor.	**Case No. 05-05926-PBINV** **Involuntary Chapter 7** **PROOF OF SERVICE**

I, the undersigned, declare, that I am over eighteen years of age and not a party to this action. I am employed in, or am a resident of, the County of San Diego, California, and my business address is: Robbins & Keehn, APC, 530 B Street, Suite 2400, San Diego, California.

I caused to be served the following document(s):

NORTHWEST FLORIDA DAILY NEWS' JOINDER IN INVOLUNTARY PETITION FOR FRANCIS J. LOPEZ

/ / / / /

[ ] BY PERSONAL SERVICE. I placed a true copy of the above-named document(s) in a sealed envelope clearly labeled to identify the party being served, and personally caused said such envelope to be personally delivered on each addressee named hereafter:

[X] BY MAIL. I declare that I am readily familiar with this business's practice for collection and processing of correspondence for mailing with the United States Postal Service, that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business; and that I enclosed a true copy of the above-named documents in a sealed envelope or package, with postage thereon fully prepaid, for each addressee named hereafter:

M. Jonathan Hayes
Law Office of M. Jonathan Hayes
21800 Oxnard Street, Suite 840
Woodland Hills, CA 91367
Telephone No.: (818) 710-3656

United States Trustee
402 West Broadway, Suite 600
San Diego, CA 92101-8511
Telephone No.: (619) 557-5013

[ ] BY OVERNIGHT DELIVERY. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

[ ] BY FAX TRANSMISSION. Based on a court order or an agreement of the parties to accept service by fax transmission, I faxed a true copy of the above-named documents the persons at the fax numbers listed below, and that the transmission was reported as complete and without error. A copy of the record of the fax transmission, which I printed out, is attached.

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[ ] BY E-MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused a true copy of the above-named documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on December 21, 2005.

//s// Cynthia K. Lay
CYNTHIA K. LAY

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UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In re: **FRANCIS J. LOPEZ,** **Alleged Debtor.**	**CASE NO. 05-05926-PBINV** **Involuntary Chapter 7** **ALTERNATIVE RESOLUTION CENTER'S JOINDER IN INVOLUNTARY PETITION FOR FRANCIS J. LOPEZ** **Dept.: Four** **Judge: Hon. Peter W. Bowie**

Alternative Resolution Center ("Petitioner"), creditor of alleged debtor Francis J. Lopez, ("Lopez"), hereby joins the Involuntary Petition filed by Alan Stanly commencing the above-captioned case, and in support thereof states:

1. Petitioner maintains a principal place of business at 11601 Wilshire Blvd. Suite 1950 Los Angeles, CA 90025. Petitioner is owed $1,575.00 by Lopez as of the date hereof (the "Claim"). The Claim is for services rendered by Judge Sarokin serving as a discovery referee, stipulated to by the parties, and appointed by the court at the request of Lopez. Petitioner did not acquire its Claim by

transfer from another entity.

2. Petitioner's Claim is non-contingent and not subject to a bona fide dispute as to its existence, nature or amount.

3. Petitioner requests that an order for relief be entered against Lopez under Chapter 7 of Title 11 of the United States Code.

4. Petitioner declares under penalty of perjury that the foregoing is true and correct according to the best of its knowledge, information and belief.

Dated: Dec 28 05 By: [signature]

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DOCKET NUMBER 37-1

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Attorneys for Petitioning Creditor
ALAN STANLY

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, an individual, Alleged Debtor.	**Case No. 05-05926-PBINV** **Involuntary Chapter 7** **PROOF OF SERVICE**

I, the undersigned, declare, that I am over eighteen years of age and not a party to this action. I am employed in, or am a resident of, the County of San Diego, California, and my business address is: Robbins & Keehn, APC, 530 B Street, Suite 2400, San Diego, California.

I caused to be served the following document(s):

ALTERNATIVE RESOLUTION CENTER'S JOINDER IN INVOLUNTARY PETITION FOR FRANCIS J. LOPEZ

/////

ROBBINS & KEEHN, APC
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[ ] BY PERSONAL SERVICE. I placed a true copy of the above-named document(s) in a sealed envelope clearly labeled to identify the party being served, and personally caused said such envelope to be personally delivered on each addressee named hereafter:

[X] BY MAIL. I declare that I am readily familiar with this business's practice for collection and processing of correspondence for mailing with the United States Postal Service, that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business; and that I enclosed a true copy of the above-named documents in a sealed envelope or package, with postage thereon fully prepaid, for each addressee named hereafter:

M. Jonathan Hayes
Law Office of M. Jonathan Hayes
21800 Oxnard Street, Suite 840
Woodland Hills, CA 91367
Telephone No.: (818) 710-3656

United States Trustee
402 West Broadway, Suite 600
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[ ] BY OVERNIGHT DELIVERY. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

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[ ] BY E-MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused a true copy of the above-named documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on December 29, 2005. //s// Cynthia K. Lay
CYNTHIA K. LAY

ROBBINS & KEEHN, APC
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DOCKET NUMBER 38

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

Minute Order

Hearing Information:

Debtor:	FRANCIS J. LOPEZ
Case Number:	05-05926-PB7 **Chapter:** 7
Date / Time / Room:	MONDAY, JANUARY 23, 2006 10:30 AM DEPARTMENT 4
Bankruptcy Judge:	PETER W. BOWIE
Courtroom Clerk:	MARILYN WILKINSON
Reporter / ECR:	LYNETTE ALVES

Matters:

1) ALLEGED DEBTOR'S MOTION FOR ORDER SETTING A DEADLINE TO ADD NEW PETITIONING CREDITORS (fr. 12/19/05)

2) STATUS CONFERENCE ON INVOLUNTARY PETITION AND ANSWER (fr. 12/19/05)

Appearances:

M. Jonathan Hayes, ATTORNEY FOR Francis J. Lopez
L. Scott Keehn, ATTORNEY FOR ALAN STANLEY

Disposition:

1&2) Continued to 3/20/06 at 2:00 p.m.

DOCKET NUMBER 39

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
Minute Order

Hearing Information:

Debtor: FRANCIS J. LOPEZ
Case Number: 05-05926-PB7 **Chapter:** 7
Date / Time / Room: MONDAY, MARCH 20, 2006 02:00 PM DEPARTMENT 4
Bankruptcy Judge: PETER W. BOWIE
Courtroom Clerk: MARILYN WILKINSON
Reporter / ECR: LYNETTE ALVES

Matters:

1) ALLEGED DEBTOR'S MOTION FOR ORDER SETTING A DEADLINE TO ADD NEW PETITIONING CREDITORS (fr. 1/23/06)

2) STATUS CONFERENCE ON INVOLUNTARY PETITION AND ANSWER (fr. 1/23/06)

Appearances:

M. Jonathan Hayes, ATTORNEY FOR Francis J. Lopez
L. Scott Keehn, ATTORNEY FOR ALAN STANLY

Disposition:

1) Off calendar.
2) Continued to 4/3/06 at 11:00 a.m. to trail hearings on Alleged Debtor's Motion for Protective Order & proposed Motion to Dismiss Case. Parties stipulated to a hearing on the motions on 4/3/06 at 11:00 a.m. Motions to be filed & served by 3/24/06; opposition to Protective Order to be filed and served by 5pm, 3/29/06. Keehn reserves right to object to a hearing on the Motion to Dismiss.

DOCKET NUMBER 40

15.P

M. Jonathan Hayes (Bar No. 90388)
Law Office of M. Jonathan Hayes
21800 Oxnard St, Suite 840
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Telephone: (818) 710-3656
Facsimile: (818) 710-3659
jhayes@polarisnet.net

FILED SD
06 MAR 27 AM 11:15
CLERK
U.S. BANKRUPTCY CT.
SO. DIST. OF CALIF.

Attorneys for Alleged Debtor Francis Lopez

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

In Re: FRANCIS J. LOPEZ, Alleged Debtor	CASE NO. 05-05926-PBINV Involuntary Chapter 7 **MOTION TO DISMISS INVOLUNTARY PETITION; DECLARATIONS OF FRANCIS J. LOPEZ AND M. JONATHAN HAYES** Date: April 3, 2006 Time: 11:00 a.m. Ctrm: 4

TO THE HONORABLE PETER W. BOWIE, UNITED STATES BANKRUPTCY JUDGE, TO PETITIONING CREDITOR ALAN STANLY AND ALL INTERESTED PARTIES:

I.

REQUEST FOR DISMISSAL

The petition in this case was filed by a single petitioning creditor Alan Stanly on June 30, 2005. On September 7, 2005, the alleged debtor, Francis Lopez filed his Answer denying all of the material allegations contained therein. Included with his Answer was a list of his creditors, as of the petition date. A copy of that list is attached hereto as **Exhibit "A."**[1] The list includes the claims of 22 creditors with total claims of $149,759.00 which includes Mr. Stanly's judgment of $50,000. Some of these creditors have been paid by Mr. Lopez since the bankruptcy filing.

As the court is aware, Mr. Lopez has been a permanent resident of Florida since July, 2003 when he and his family moved there from California. He owns a residence in Florida and is employed there. Mr. Lopez and his wife have recently agreed to sell their home and the proceeds of the sale will be sufficient to pay all creditors in full. The sale escrow cannot close without this order because of the "cloud" on title caused by this case.

Based thereon, the alleged debtor seeks an order dismissing this bankruptcy case. As part of the dismissal, Mr. Lopez will execute an irrevocable escrow instruction to pay one of the creditors in full, Wayne Wise, whom Mr. Lopez listed with his creditors with a claim of $15,000. Escrow will also be instructed irrevocably to transfer $135,000 into the client trust account of M. Jonathan Hayes to be held as follows:

Mr. Hayes will contact each of the remaining 21 creditors in writing and request a written demand for payment. Upon resolution of the amount owed, in writing, Mr. Hayes will cause each creditor to be paid out of the funds in his client trust account. Upon confirmation from the creditor in writing to Mr. Hayes that no amount is owed to a particular creditor, or if the amount owed is less than the amount set forth on **Exhibit "A"** and is paid, the balance of the funds with respect to those creditors will be returned to Mr. Lopez by Mr. Hayes. Once, each of the 21 creditors are paid or there is written confirmation that no balance is owing, Mr. Hayes will return the remaining funds to Mr. Lopez.

---

[1] The court is reminded that in the response to an earlier Motion to Dismiss or Transfer the case, Mr. Stanly asserted that he believed that the alleged debtor had only a few creditors including him (which was why he was the only petitioning creditor at the time).

With respect to Mr. Stanly's claim, Mr. Lopez intends to post a *supersedeas* bond with the California Superior Court that will automatically effectuate a stay pending appeal of the judgment obtained by Mr. Stanly against Mr. Lopez. The automatic stay pursuant to California C.C.P. 917.1(b) requires a bond from "an admitted surety insurer" of 150% of the $50,000 judgment or $75,000. In order to obtain such a bond, Mr. Lopez will be required by the bonding company to post a cash deposit of the full bonded amount of $75,000. Mr. Lopez will be entitled to use $50,000 of the funds in the client trust account to collateralize the *supersedeas* bond. If the bond is not obtained and filed with the superior court within fifteen days after the funds are transferred to Mr. Hayes' account, Mr. Hayes will forward $50,000 to Mr. Stanlys' counsel.

The debtor requests an Order Dismissing this Involuntary Petition based on the above arrangement to pay all of his creditors. If escrow does not close within twenty days of entry of the Order, or if there are insufficient funds to pay the full amount indicated to Mr. Hayes' client trust account, Mr. Lopez will stipulate to an Order Vacating the Order Dismissing this case.

II.

CONCLUSION

This case should be dismissed because under the proposal set forth herein every creditor will be paid or adequate irrevocable assurance that they will be paid in the future will be provided. Mr. Lopez' counsel will bring an Order to the hearing and request immediate entry so that the Order may be forwarded to escrow in Florida. A proposed Order is attached hereto as **Exhibit "B."**

Respectfully submitted,

LAW OFFICES OF M. JONATHAN HAYES

Dated: March 23, 2006

By: ______________________
M. Jonathan Hayes, attorney for Francis J. Lopez

Signature by the attorney constitutes a certification under Fed. R. Bankr. P. 9011 that the relief provided by the order is the relief granted by the court.

Submitted by:

By: ______________________
M. Jonathan Hayes
Attorney for Francis J. Lopez

DECLARATION OF FRANCIS J. LOPEZ

I, Francis J. Lopez, declare as follows:

1. I am the alleged debtor in this matter. The statements made herein are of my own personal knowledge and if called upon to testify, I could and would competently testify thereto.

2. On September 7, 2005, I filed my Answer along with a list of my creditors, as of the petition date. A true and correct copy of that list is attached hereto as **Exhibit "A."** The list includes the claims of 22 creditors with total claims of $149,759.00 which includes Mr. Stanly's judgment of $50,000. I have paid some of these creditors since the bankruptcy filing.

3. I have been a permanent resident of Florida since July, 2003 when I and my family moved there from California. I own a residence in Florida and am employed there. My wife and I have recently agreed to sell our home and the proceeds of the sale will be sufficient to pay all creditors in full. The sale escrow cannot close without this order because of the "cloud" on title caused by this case.

4. As part of the requested dismissal, my wife and I will execute an irrevocable escrow instruction to pay one of the creditors in full, Wayne Wise, $15,000 and to transfer $135,000 into the client trust account of M. Jonathan Hayes to be held to pay my creditors.

5. With respect to Mr. Stanly's claim, I intend to post a *supersedeas* bond with the California Superior Court that will automatically effectuate a stay pending appeal. I have spoken to a number of bonding companies and they will require me to post a cash deposit of the full bonded amount of $75,000. I will need to use $50,000 of the funds in the client trust account to collateralize the *supersedeas* bond. I agree, that if the bond is not obtained and filed with the superior court within fifteen days after the funds are transferred to Mr. Hayes' account, Mr. Hayes will forward $50,000 to Mr. Stanlys' counsel.

6. I agree that if escrow does not close within twenty days of entry of the Order, or if there are insufficient funds to pay the full amount indicated to Mr. Hayes' client trust account, I will stipulate to an Order Vacating the Order Dismissing this case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed this ______ day of March, 2006 at Destin, FL.

____

Francis J. Lopez

6. I agree that if escrow does not close within twenty days of entry of the Order, or if there are insufficient funds to pay the full amount indicated to Mr. Hayes' client trust account, I will stipulate to an Order Vacating the Order Dismissing this case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 23rd day of March, 2006 at Destin, FL.

Francis J. Lopez

DECLARATION OF M. JONATHAN HAYES

I, M. Jonathan Hayes, declare as follows:

1. I have personal knowledge of the facts set forth below and if called as a witness to testify, I would and could testify competently thereto. I am a member of the California Bar. I am admitted to practice in all the courts of the State of California and am admitted to practice before the District Court of the Central District of California.

2. I have agreed with Mr. Lopez and represent to the court that I will contact each of the 21 creditors in writing and request a written demand for payment. Upon resolution of the amount owed, in writing, I will cause each creditor to be paid out of the funds to be transferred by escrow to my client trust account. Upon confirmation from the creditor in writing to me that no amount is owed to a particular creditor, or if the amount owed is less than the amount set forth on **Exhibit "A"** and is paid, I will return the balance of the funds with respect to those creditors to Mr. Lopez. Once, each of the 21 creditors are paid or there is written confirmation that no balance is owing, I will return the remaining funds to Mr. Lopez. I will not return the funds to him before that time.

3) If requested by Mr. Lopez, I will send $50,000 of the funds in the client trust account directly to the bonding company if needed to collateralize the *supersedeas* bond he intends to obtain. If the bond is not obtained and filed with the superior court within fifteen days after the funds are transferred to my account, I will forward $50,000 to Mr. Stanlys' counsel.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 23 day of March, 2006, at Woodland Hills, California.

[signature]
M. Jonathan Hayes

FRANCIS LOPEZ
EXHIBIT A
LIST OF CREDITORS

Progressive Insurance
PO Box 31260
Tampa, FL 33631
Acct. 37287380-4
$157.20
Insurance, Auto

Coastal Community Insurance
12139 Panama City Beach Pkwy.
Panama City Beach, FL 32407
Policy No. LHQ336763
$1,013.00
Insurance, Flood (Property)

Quicken Platinum Card
PO Box 44167
Jacksonville, FL 32231
$848.00
Goods and services, 1998- 2005

Okaloosa Gas District
PO Box 548
Valparaiso, FL 32580
$45.00
Utilities

Northwest Florida Daily News
200 Racetrack Rd.
Ft. Walton Beach, FL 32549
$45.00
Newspaper

Kelly Plantation Owners Association
4393 Commons Drive E.
Destin, FL 32541
$550.00
Homeowner's Association

Allstate Floridian
54 Beal Parkway
Ft. Walton Beach, FL 32548
$1900.00
Homeowners Insurance

Texaco / Shell
PO Box 9151
Des Moines, IA 50368
Acct. No. 77-917-6550-1
$290.00
Gasoline and related

Bank Of America
PO Box 1390
Norfolk, VA 23501
Acct. No. 4050860512429141
Credit Card, goods and services
$2386.00

Verizon Wireless
PO Box 660108
Dallas, TX 75266
Acct. No. 81955380600001
$45.00
Utility – telephone

Cox Communications
PO Box 60970
New Orleans, LA
Acct. No. 0018710003886502
Utility – television and Internet
$112.00

Union Bank of California
8155 Mercury Ct.
San Diego, CA 92111
Settlement of Union Bank v. Francis Lopez, $15,000 original balance
$6,000.00

Bankcard Services
PO Box 15287
Wilmington, DE 19886
Acct. No. 5490999178488929
$10,000.00
Goods and services – 2001- 2005

Cingular Wireless
PO Box 8229
Aurora, IL 60572
Acct. No. 0050443578
$125.00
Utilities – telephone

Wayne Wise
810 Red Tanager Ct.
Nashville, TN 37221
$15,000.00
Personal Loan

Valley Forge Life Insurance
100 CNA Drive
Nashville, TN 37214
Acct. No. VITU045825
$0.00 ($486.00 per year)
Life Insurance

American Home Shield
PO Box 849
Carroll, IA 51401
Acct. No. 58449061
$128.00
Home appliance insurance

Citi Cards
PO Box 6414
The Lakes, NV 88901
Acct. No. 5424180306665024
$32,515.00
Goods and Services, 1994 - 2005

Household Bank / HSBC
PO Box 5222
Carol Stream, IL 60197
Acct. No. 5176690006732635
Goods and Services, 2003 - 2005
$5,000.00

American Express
PO Box 297804
Ft. Lauderdale, FL 33329
Acct. No. 378349802283007
$22,000.00
Goods and Services, 1994 - 2004
Note: Some of this debt may be owed by Prism and/or Stanly, though I have personal guarantee

Ft. Walton Beach Medical Center
1000 Mar Walt Drive
Ft. Walton Beach, FL 32547
$1600.00
Medical and Health services
Making payments of $100.00 month

Alan Stanly
1569 Berkshire Ct.
San Marcos, CA 92069
$50,000.00
Judgment in Union Bank v. Stanly (cross-complaint by Stanly)
Currently under appeal in CA

M. Jonathan Hayes (Bar No. 90388)
Law Office of M. Jonathan Hayes
21800 Oxnard St, Suite 840
Woodland Hills, CA 91367
Telephone: (818) 710-3656
Facsimile: (818) 710-3659
jhayes@polarisnet.net

Attorneys for Alleged Debtor Francis Lopez

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

In Re: FRANCIS J. LOPEZ, Alleged Debtor	CASE NO. 05-05926-PBINV Involuntary Chapter 7 **(Proposed) ORDER DISMISSING INVOLUNTARY PETITION** Date: April 3, 2006 Time: 11:00 a.m. Ctrm: 4

A hearing took place at the above time and place, M. Jonathan Hayes appearing for Alleged Debtor Francis Lopez and L. Scott Keehn appearing for Petitioning Creditor Alan Stanly. After consideration of the Motion to Dismiss filed by the Alleged Debtor, and oppositions is any, and good cause appearing,

IT IS ORDERED:

1) The Involuntary Petition is dismissed subject to being reopened as set forth herein.

2. Mr. Lopez shall execute an irrevocable escrow instruction to pay one of the creditors in full, Wayne Wise, whom Mr. Lopez listed with his creditors with a claim of $15,000, as well as to irrevocably transfer $135,000 into the client trust account of M. Jonathan Hayes.

3. Mr. Hayes is ordered to contact each of the remaining 21 creditors in writing and request a written demand for payment. Upon resolution of the amount owed, in writing, Mr. Hayes shall cause each creditor to be paid out of the funds in his client trust account. Upon confirmation from the creditor in writing to Mr. Hayes that no amount is owed to a particular creditor, or if the amount owed is less than the amount set forth on Exhibit "A" to the Motion to Dismiss, and is paid, the balance of the funds with respect to those creditors will be returned to Mr. Lopez by Mr. Hayes. Once, each of the 21 creditors are paid or there is written confirmation that no balance is owing, Mr. Hayes will return the remaining funds to Mr. Lopez.

4. Mr. Hayes is authorized to transfer $50,000 to a bonding company if required to post a cash deposit of the bonded amount. If the bond is not obtained and filed with the superior court within fifteen days after the funds are transferred to Mr. Hayes' account, Mr. Hayes shall forward $50,000 to Mr. Stanlys' counsel.

5. If the sale escrow now pending does not close within twenty days of entry of this Order, or if there are insufficient funds to transfer $135,000 to Mr. Hayes' client trust account, counsel for the petitioning creditor may seek to vacate this order on shortened notice.

Dated: ________________

____
Hon. Peter W. Bowie
United States Bankruptcy Judge

B-2

PROOF OF SERVICE

I, MJ Hayes, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 21800 Oxnard St., Suite 840, Woodland Hills, CA 91367. On March 23, 2006, I served the within documents:

ý by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

L. Scott Keehn
Sarah H. Lanham
ROBBINS & KEEHN, APC
530 B Street, Suite 2400
San Diego, CA 92101
AND BY EMAIL

Northwest Florida Daily News
Elenor Hypes
200 Racetrack Rd.
Fort Walton Beach, FL 32547

Alternative Resolution Center
11601 Wilshire Blvd., Ste 1950
Los Angeles, CA 90025

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 23, 2006, at Los Angeles, California.

MJ Hayes

DOCKET NUMBER 41

M. Jonathan Hayes (Bar No. 90388)
Law Office of M. Jonathan Hayes
21800 Oxnard St, Suite 840
Woodland Hills, CA 91367
Telephone: (818) 710-3656
Facsimile: (818) 710-3659
jhayes@polarisnet.net

Attorneys for Alleged Debtor Francis Lopez

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CLERK
U.S. BANKRUPTCY CT
SO. DIST. OF CALIF.

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

In Re: FRANCIS J. LOPEZ, Alleged Debtor	CASE NO. 05-05926-PBINV **Involuntary Chapter 7** **NOTICE OF MOTION AND MOTION OF ALLEGED DEBTOR FOR A PROTECTIVE ORDER PURSUANT TO FRCP 26(c) AND TO QUASH SUBPOENA; DECLARATIONS OF M. JONATHAN HAYES AND FRANCIS J. LOPEZ** Date: April 3, 2006 Time: 11:00 a.m. Ctrm: 4

TO THE HONORABLE PETER W. BOWIE, UNITED STATES BANKRUPTCY JUDGE, TO PETITIONING CREDITOR ALAN STANLY AND ALL INTERESTED PARTIES:

I.

INTRODUCTION

Francis J. Lopez and the petitioning creditor Alan Stanly have been involved in significant litigation against each other since before the bankruptcy filing of their entity Prism Advanced Technologies, Inc. ("Prism"). This litigation has been bitterly fought for the past two years and is now pending in Superior Court between the parties, namely Lopez v Stanly, Case No. GIN029692, filed on May 14, 2003, San Diego Superior Court, North County. In that matter, Mr. Lopez is suing Mr. Stanly for numerous causes of action, including invasion of privacy, breach of fiduciary duty, trespass and identity theft. Mr. Stanly filed a cross-complaint, of course.

Recently, in a second case, Mr. Stanly was successful in obtaining a judgment against Mr. Lopez for approximately $50,000 relating to a guarantee both had made to Union Bank of a Prism loan. This involuntary chapter 7 petition is simply an extension of the litigation and a new strategy by Mr. Stanly to cause as much business and personal pain to Mr. Lopez as possible.

In any event, Mr. Lopez has been a permanent resident of Florida since July, 2003 when he and his family moved there from California. He owns a residence in Florida and is employed there. None of his creditors other than Stanly have any particular nexus to California.

On or about March 16, 2006, nearly nine months after the involuntary petition was filed, and after a number of communications between counsel, counsel for the petitioning creditor unilaterally decided that Mr. Lopez' deposition would go forward in San Diego even though Mr. Lopez lives and works in Florida and even though Mr. Hayes, his counsel lives and works in Los Angeles. A short letter and a subpoena were emailed to Mr. Hayes advising that Mr. Lopez was therefore required to appear in San Diego on April 14, 2006. A copy of the letter and Subpoena are attached hereto as **Exhibit "A."** The date was agreed to by the parties but Mr. Lopez required that the location be in Florida.

Mr. Lopez has only been to California a few times at most in the last three years. It is incredibly unfair that he must defend against this spurious involuntary proceeding in any event but to require him to travel 3,000 miles to have his deposition taken is over the top.

II.

STATUTORY BASIS FOR PROTECTIVE ORDER

Federal Rule of Civil Procedure 26 "General Provisions Governing Discovery; Duty of Disclosure" states in subpart c:

> **(c) Protective Orders.**
>
> Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
>
> (1) that the disclosure or discovery not be had;
>
> . . .
>
> (4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;
>
> If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or other person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

The Subpoena requires Mr. Lopez to travel 3,000 miles so that *Mr. Keehn will not be inconvenienced* by having to travel to Florida. There is no other reason for the deposition to take place here. Certainly no reason is offered or was ever discussed. The cases cited by Mr. Keehn in his March 16, 2006 letter are inapposite. In *U.S. v. $160,066.98 from Bank of America*, 202 F.R.D. 624 (S.D.Cal.,2001), the parties seeking the protective order asked the court to order the depositions to go forward in Pakistan *even though they had filed their claims in the California action.* The court said:

> "While a court may order a defendant to appear at any convenient place, case law indicates that 'it will be presumed that the defendant will be examined at his residence or place of business or employment.' " Farquhar, 116 F.R.D. at 72 (citations omitted). In the absence of special circumstances, "a party seeking discovery must go where the desired witnesses are normally located." *Id.* Underlying that general rule "appears to be the concept that it is plaintiffs who bring the lawsuit and who exercise the first choice as to the forum. The defendants, on the other hand, are not before the court by choice.

The residence and place of employment is Florida. Mr. Lopez has not chosen the court or the venue. In fact, he moved early in this case for an order transferring the case to Florida which was denied. No "special circumstance" have been shown nor any offered other than the convenience to Mr. Keehn. Mr. Lopez is not before this court by choice.

In *Benchmark Design, Inc. v. BDC, Inc.*, 125 F.R.D. 511 (D.Or.,1989), a one page decision, the court stated: "On a motion for a protective order, the court should balance the costs and burdens to each side." Mr. Lopez will probably find an attorney to represent him in Florida just for the deposition. The cost of going forward there to him is nominal compared to the cost of coming to California, missing work for a few days, lodging, being away from his wife and children.

See also, *Morin v. Nationwide Federal Credit Union*, 229 F.R.D. 362

(D.Conn.,2005)(The convenience of counsel is less compelling than any hardship to the witnesses, when determining the location of a deposition, for purpose of a motion for protective order to change the location in the deposition notice. Plaintiff has the affirmative burden of demonstrating peculiar circumstances which compel the court to order the depositions to be held in an alternate location.); *O'Sullivan v. Rivera*, 2004 WL 3413116 (D.N.M.,2004) (An out-of-state deponent is under no obligation to travel to the location where the case was filed for a deposition). There are no peculiar circumstances shown or even offered.

It is the burden of the petitioning creditor to show compelling circumstances why Mr. Lopez should be forced to travel to San Diego for his deposition. They offered no explanation whatsoever in their letter demanding that he appear.

III.

THE SUBPOENA REQUESTS DOCUMENTS WHICH ARE IRRELEVANT, PRIVILEGED OR VIOLATE MR. LOPEZ' RIGHT TO PRIVACY

The court previously granted the motion of the debtor to bifurcate the trial as to number of creditors in the first instance and generally paying his debts as they become due in the second instance. The single petitioning creditor was claiming that there were fewer than twelve creditors. The court at that time stated on the record that discovery would be limited to the number of creditors until trial resolved that issue.

The subpoena however requires Mr. Lopez to produce written agreements with his employer Noveon Systems, Inc. and "any and all licensing agreements" between the two in Request 1. This could not relate to establishing that the number of creditors were fewer than 12. The subpoena seeks copies of Mr. Lopez' tax returns in Request 2. It seeks documents relating to the payments by Mr. Lopez to his attorneys in Request 4. It seeks documents which support Mr. Lopez' assertion that the petition was filed in bad faith in Request 8.

These requests should be quashed and/or a protective order entered prohibiting Mr. Stanly from making those demands. The tax returns are privileged as are the payments to his counsel. Request Nos. 1 and 8 are outside of the boundaries that the court has previously set for discovery.

IV.

CONCLUSION

Alleged Debtor prays that this court issue its order that the deposition of Francis Lopez must take place in Florida, that Requests Nos. 1, 2, 4 and 8 are prohibited, and that Mr. Stanly may not propound any discovery beyond the issue of number of creditors on the date of the filing of the involuntary petition, and for other orders which are just.

Dated: March 23 2006

Respectfully submitted

By: ______________________
M. Jonathan Hayes
Attorney for Alleged Debtor Francis Lopez

Signature by the attorney constitutes a certification under Fed. R. Bankr. P. 9011 that the relief provided by the order is the relief granted by the court.

Submitted by:

By: ______________________
M. Jonathan Hayes
Attorney for Francis J. Lopez

DECLARATION OF FRANCIS LOPEZ

I, Francis Lopez, declare and state as follows:

1. I am the alleged debtor in this involuntary proceeding. I have personal knowledge of the facts stated herein, and if called as a witness, I could and would testify competently thereto.

2. I have been a permanent resident of Florida since July, 2003 when I and my family moved there from California. We own a residence in Florida and I am employed there. I have no plans to travel to California except to appear at the trial in this case. I will probably retain counsel in Florida for the deposition.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Executed on this __th day of March, 2006 at Destin, Florida.

By:______________________________
Francis J. Lopez

DECLARATION OF FRANCIS LOPEZ

I, Francis Lopez, declare and state as follows:

1. I am the alleged debtor in this involuntary proceeding. I have personal knowledge of the facts stated herein, and if called as a witness, I could and would testify competently thereto.

2. I have been a permanent resident of Florida since July, 2003 when I and my family moved there from California. We own a residence in Florida and I am employed there. I have no plans to travel to California except to appear at the trial in this case. I will probably retain counsel in Florida for the deposition.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Executed on this 27 th day of March, 2006 at Destin, Florida.

By: [signature]
Francis J. Lopez

DECLARATION OF M. JONATHAN HAYES

I, M. Jonathan Hayes, declare and state as follows:

1. I am an attorney, authorized to practice before this court. I have personal knowledge of the facts stated herein, and if called as a witness, I could and would testify competently thereto.

2. Attached hereto as Exhibit A is a true and correct copy of the letter I received from Mr. Keehn's office with the Subpoena attached.

3. I agreed with Mr. Keehn to the date of April 14, 2006 for the deposition but made it clear that the deposition would have to take place in Florida.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Executed on this 23th day of March, 2006 at Woodland Hills, California.

By: [signature]
M. Jonathan Hayes

ROBBINS & KEEHN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

ARLINGTON RAY ROBBINS
(1932-2004)

L. SCOTT KEEHN
MICHAEL V. PUNDEFF
CHARLES F. ROBBINS
SARAH H. LANHAM
LISA L. KEEHN

2400 UNION BANK BUILDING
530 "B" STREET
SAN DIEGO, CALIFORNIA 92101

TELEPHONE (619) 232-1700
TELECOPIER (619) 544-9095

March 16, 2006

< VIA EMAIL, AND U.S. MAIL >

M. Jonathan Hayes
Law Office of M. Jonathan Hayes
21800 Oxnard Street, Suite 840
Woodland Hills, California 91367
Email: jhayes@polarisnet.net

Re: **DEPOSITION OF FRANCIS LOPEZ**
In Re Francis Lopez (Case No. 05-05926-PBINV; Southern District of California)

Dear Mr. Hayes:

Thank you for your email yesterday in which you informed me that your client, Francis Lopez, is available for a deposition on Friday April 14, 2006. Based on that, we have issued the enclosed subpoena to Mr. Lopez, scheduling his deposition for Friday April 14, 2006 at 1:00p.m. in our offices.

I know you stated that Mr. Lopez had "no present plans to come to the west coast except possibly to attend the trial in this matter," but our research confirms that courts will compel an out-of-state party to appear for a deposition in the jurisdiction where the action is pending where, as here, both parties have retained local counsel, and the action involves business conducted in the jurisdiction where the action is pending. *U.S. v. $160,066.98 from Bank of America*, 202 F.R.D. 624, 627-628 (S.D.Cal. 2001); *Benchmark Design, Inc. v. BDC, Inc.*, 125 F.R.D. 511, 512 (D.Or. 1989). Given that strong authority, we believe it is both reasonable and appropriate for Mr. Lopez to attend his deposition at our offices in San Diego – the jurisdiction where this action is pending.

Feel free to contact me if you have any questions, or need to discuss this matter further.

Sincerely,

Leslie F. Keehn
For
ROBBINS & KEEHN, APC

cc: Client (via e-mail only)
106015/LFK/5311.01

EX-A

L. Scott Keehn, SBN 61691
ROBBINS & KEEHN, APC
530 B Street, Suite 2400
San Diego, California 92101
Telephone: 619-232-1700
Facsimile: 619-544-9095

**Attorneys for Petitioning Creditor,
Alan Stanly**

UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In re: **FRANCIS J. LOPEZ,** **Alleged Debtor.**	**CASE NO. 05-05926-PBINV** **Involuntary Chapter 7** **NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF FRANCIS J. LOPEZ; NOTICE OF DEPOSITION; AND DEMAND FOR PRODUCTION OF DOCUMENTS** **Judge: Hon. Peter W. Bowie** **Dept.: Four**

TO: ALL PARTIES HEREIN AND THEIR COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN THAT, pursuant to Rule 45 of the Federal Rules Of Civil Procedure, made applicable to these proceedings by Rule 9016 of the Federal Rules of Bankruptcy Procedure, and the "Subpoena In a Case Under the Bankruptcy Code" (a copy of which is attached hereto marked "Exhibit 1" and incorporated herein by this reference), Petitioning Creditor Alan Stanly ("Stanly") will take the deposition of Alleged Debtor Francis J. Lopez ("Lopez"), whose last known address is 310 Sand Myrtle Trail, Destin, Florida 32541-3429, on Friday April 14, 2006, at 1:00p.m. at the offices of Robbins & Keehn, APC, located at 530 B Street, Suite 2400, San Diego, California 92101. The deposition will be conducted before a certified shorthand

ROBBINS & KEEHN, APC
ATTORNEYS AT LAW
2400 UNION BANK BUILDING · 530 "B" STREET
SAN DIEGO, CALIFORNIA 92101
TELEPHONE (619) 232-1700 · TELECOPIER (619) 544-9095

reporter, or other person authorized by the laws of the United States to administer oaths. If not completed on the date specified, the deposition will continue from day to day thereafter, except for Sundays and holidays, until completed.

Pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure, made applicable to these proceedings by Rules 7026, 7030 and 9014 of the Federal Rules of Bankruptcy Procedure, Stanly reserves the right to make both audio and video recordings of this deposition, in addition to stenographic recording.

PLEASE TAKE FURTHER NOTICE THAT, at the time and place of the deposition, Lopez is commanded to produce to Stanly the documents identified in Exhibit A to the attached subpoena.

Dated: March 16, 2006

ROBBINS & KEEHN
A Professional Corporation

By: [signature]
L. Scott Keehn
Attorneys for Petitioning Creditor
Alan Stanly

ROBBINS & KEEHN, APC
ATTORNEYS AT LAW
2400 UNION BANK BUILDING · 530 "B" STREET
SAN DIEGO, CALIFORNIA 92101
TELEPHONE (619) 232-1700 · TELECOPIER (619) 544-9095

EXHIBIT 1

B 256 (11/91)

United States Bankruptcy Court

Northern District of **Florida**

In re **FRANCIS J. LOPEZ**,
Alleged Debtor

SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE

Case No.[1] **05-05926-PBINV**

United States Bankruptcy Court for the Southern District of California

To: **FRANCIS J. LOPEZ**

Chapter 7

☐ YOU ARE COMMANDED to appear in the United States Bankruptcy Court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY N/A	COURTROOM N/A
	DATE AND TIME N/A

☒ YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
ROBBINS & KEEHN 530 "B" Street, Suite 2400 San Diego, CA 92101	April 14, 2006 1:00 p.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

SEE EXHIBIT "A"

PLACE	DATE AND TIME
Robbins & Keehn, APC 530 "B" Street, Suite 2400, San Diego, CA 92101	April 14, 2006 1:00 p.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES N/A	DATE AND TIME N/A

Any organization not a party to this proceeding that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify, Fed. R. Civ. P. 30(b)(6) made applicable in proceedings by Rule 7030, Fed. R. Bankr. P. See Rules 1018 and 9014, Fed. R. Bankr. P.

ISSUING OFFICER SIGNATURE AND TITLE	DATE
L. Scott Keehn Attorneys for Petitioning Creditor	3/16/06
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER L. Scott Keehn, Esq., ROBBINS & KEEHN, APC, 530 "B" Street, Suite 2400, San Diego, CA 92101, 619-232-1700	

[1] If the bankruptcy case is pending in a district other than the district in which the subpoena is issued, state the district under the case number.

B 256 (11/91) (cont.)

PROOF OF SERVICE

DATE	PLACE
	310 Sand Myrtle Trail Destin, FL 32541-3429

SERVED

SERVED ON (PRINT NAME)	MANNER OF SERVICE
	Personally

SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on ______________________
DATE

____
SIGNATURE OF SERVER

Advanced Investigations
ADDRESS OF SERVER
24 Racetrack Rd. NW
Ft. Walton Beach, FL 32547

Rule 45, Fed. R. Civ. P., Parts (c) & (d) made applicable in cases under the Bankruptcy Code by Rule 9016, Fed. R. Bankr. P.

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT A

EXHIBIT "A"
SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE

DEFINITIONS

The following capitalized terms and definitions shall apply to the request for documents herein:

A. "DOCUMENT" means all originals — and any copies that differ in any way from the original — of all written, recorded or graphic matter, whether produced or reproduced by handwriting, magnetic recording, photograph, photostat, photocopy, printing, tape, transcription of spoken language or other record of spoken language, typewriting, writing or any other means as defined in Federal Rule of Evidence 1001, and includes, without limitation, accountant's statements, agreements, appointment books, analyses, architectural plans and drawings, bank statements, bills, blueprints, books, building plans, business records, cablegrams, calendars, cards, checks, change orders, charts, claim files, hard copy computer printouts, computer tapes, contracts, correspondence, credit memoranda, diaries, documents, emails, equipment specifications, expense accounts, facsimiles, file cards, films, financial statements and reports, handwritten notes, invoices, installation drawings or schematics, journals, ledgers, letters, logs, memoranda, memorials in any form of conversations (including telephone conversations), minutes, notes, notices, pamphlets, papers, personnel records, presentations, purchase orders, rate cards, receipts, recordings, reports, telegrams and any other pertinent information set forth in written language or any electronic representation thereof, and any copies of such material if you do not have control or possession of the original.

The term "DOCUMENT" also includes information stored by computer or on a computer disk, diskette, tape or card, as well as any electronic recording, tape recording, photograph, video, file, microfilm, microfiche, or similar recording of words, images, sounds, pictures or information of any kind.

The term "DOCUMENT" also includes any and all drafts of, amendments, or supplements to any of the foregoing, whether prepared by you or any other person, as well as copies of the documents that differ from the copy being produced (*e.g.*, a different copy is one that contains handwritten notes, interlineations, underlining and the like).

B. "LOPEZ" refers to Francis J. Lopez, the Alleged Debtor herein.

C. "PERSON" means any individual (natural person), corporation, organization, association, partnership, limited partnership, limited liability company, firm, joint venture, trust, governmental body, agency, governing board, department or division, or any other entity.

D. "RELATIVE" means any individual related to YOU by affinity or consanguinity within the third degree as determined by common law, or any individual in a step or adoptive relationship with YOU within such third degree.

D. "STANLY" refers to Alan Stanly, the Petitioning Creditor herein.

E. "YOU" and "YOUR" refer to Francis J. Lopez, the Alleged Debtor herein, and shall include, wherever applicable, any agents, employees, representatives, attorneys and/or any

EXHIBIT "A"
SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE

PERSON acting on his behalf.

F. "YOUR ANSWER" means and refers to the Answer of Alleged Debtor to Involuntary Petition dated September 6, 2005, and filed in this proceeding on or about September 7, 2005.

G. "YOUR CREDITORS" means and refers to the PERSONS identified as LOPEZ's creditors on Exhibit A to the "Declaration of Francis J. Lopez Re Creditors (Filed as a Supplement to Answer to Involuntary Petition) filed in this proceeding on or about September 19, 2005.

H. The singular shall be interchangeable with the plural, the masculine, feminine, and neuter shall be interchangeable, and the terms "and" and "or" shall be both conjunctive and disjunctive.

INSTRUCTIONS

This Document Request covers all DOCUMENTS in YOUR possession, custody or control, or in the possession, custody or control of YOUR agents, employees, officers, directors, independent contractors, attorneys, accountants, representatives, or RELATIVES wherever located.

DOCUMENTS TO BE PRODUCED

1. True and correct copies of any and all written agreements between YOU and Noveon Systems, Inc. This request includes, but is not limited to, any and all license agreements between YOU and Noveon Systems, Inc.

2. Any and all tax returns YOU filed for the 2001 and 2004 calendar years. Please note that the California state law privilege against disclosure of an individual's tax returns does not apply in federal actions. *Young v. U.S.* 149 F.R.D. 199, 200 (S.D.Cal. 1993). Moreover, since LOPEZ has already produced copies of his 2002 and 2003 personal tax returns, any applicable privilege against disclosure of additional tax returns has been waived. *Id.* at 205.

3. Any and all DOCUMENTS evidencing any and all payments YOU have made to any of the following PERSONS during the time period of June 30, 2005 through the present:

(a) Progressive Insurance (identified as one of YOUR CREDITORS)
(b) Coastal Community Insurance (identified as one of YOUR CREDITORS)
(c) Quicken Platinum Card (identified as one of YOUR CREDITORS)
(d) Okaloosa Gas District (identified as one of YOUR CREDITORS)
(e) Northwest Florida Daily News (identified as one of YOUR CREDITORS)
(f) Kelly Plantation Owners Association (identified as one of YOUR CREDITORS)
(g) Allstate Floridian (identified as one of YOUR CREDITORS)

EXHIBIT "A"
SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE

(h) Texaco/Shell (identified as one of YOUR CREDITORS)
(i) Bank of America (identified as one of YOUR CREDITORS)
(j) Verizon Wireless (identified as one of YOUR CREDITORS)
(k) Cox Communications (identified as one of YOUR CREDITORS)
(l) Union Bank of California (identified as one of YOUR CREDITORS)
(m) Bankcard Services (identified as one of YOUR CREDITORS)
(n) Cingular Wireless (identified as one of YOUR CREDITORS)
(o) Wayne Wise (identified as one of YOUR CREDITORS)
(p) Valley Forge Life Insurance (identified as one of YOUR CREDITORS)
(q) American Home Shield (identified as one of YOUR CREDITORS)
(r) Citi Cards (identified as one of YOUR CREDITORS)
(s) Household Bank / HSBC (identified as one of YOUR CREDITORS)
(t) American Express (identified as one of YOUR CREDITORS)
(u) Ft. Walton Beach Medical Center (identified as one of YOUR CREDITORS)

4. Any and all DOCUMENTS evidencing any and all payments YOU have made for legal services during the time period of June 30, 2004 through the present. This request includes, but is not limited to, Any and all checks YOU issued to YOUR attorneys to pay for legal services.

5. Any and all DOCUMENTS evidencing any and all loan payments YOU have made to RELATIVES during the time period of June 30, 2004 through the present. This request includes, but is not limited to, true and correct copies of checks YOU issued to YOUR RELATIVES to repay loans YOU obtained from YOUR RELATIVES.

6. Any and all DOCUMENTS evidencing any and all loan payments YOU have made to any PERSON (other than a RELATIVE) during the time period of June 30, 2004 through the present. This request includes, but is not limited to, true and correct copies of checks YOU issued to repay loans YOU obtained (from any PERSON other than a RELATIVE) .

7. Any and all DOCUMENTS which YOU believe support YOUR claim that the judgment debt STANLY alleges YOU owe to STANLY is "subject to a bona fide dispute" as alleged in Paragraph 6 of YOUR ANSWER.

8. Any and all DOCUMENTS which YOU believe support YOUR claim that the involuntary petition filed herein "was filed in bad faith" as alleged in Paragraph 7 of YOUR ANSWER.

9. Any and all DOCUMENTS which YOU believe establish that the debt of $69.30 which YOU allegedly owe to petitioning creditor Northwest Florida Daily News is disputed.

10. Any and all DOCUMENTS which YOU believe establish that the debt of $1,575 which YOU allegedly owe to petitioning creditor Alternative Resolution Center is disputed.

PROOF OF SERVICE

I, MJ Hayes, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 21800 Oxnard St., Suite 840, Woodland Hills, CA 91367. On March 23, 2006, I served the within documents:

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

X by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

.. by causing personal delivery by _______________ of the document(s) listed above to the person(s) at the address(es) set forth below.

.. by placing the document(s) listed above in a sealed _______________ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _______________ agent for delivery

.. by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

L. Scott Keehn
Sarah H. Lanham
ROBBINS & KEEHN, APC
530 B Street, Suite 2400
San Diego, CA 92101
AND BY EMAIL

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 23, 2006, at Los Angeles, California.

____
MJ Hayes

DOCKET NUMBER 42

L. Scott Keehn (61691)
ROBBINS & KEEHN, APC
A Professional Corporation
530 "B" Street, Suite 2400
San Diego, California 92101
Telephone: (619) 232-1700

Attorneys for **Moving Creditor, ALAN STANLY**

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

In Re: FRANCIS J. LOPEZ Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **ALAN STANLY'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER AND TO QUASH SUBPOENA** **Date:** April 3, 2006 **Time:** 11:00 a.m. **Ctrm:** 4

I

INTRODUCTION

Lopez's Motion for a Protective Order fails to address the appropriate legal standard for compelling a party to travel to the jurisdiction where the action is pending, and misstates the facts pertaining to the parties' discussions regarding Lopez's position on traveling to California to attend his deposition.

Lopez's Motion incorrectly states that during the meet and confer process pertaining to Lopez's deposition, "Mr. Lopez ***required*** that the [deposition] location be in Florida."[1] This statement is not accurate, as reflected in the letter from Stanly's counsel to Lopez's counsel, attached as Exhibit A to Lopez's Motion, which precisely quotes Lopez's position on traveling to San Diego: "Mr. Lopez has **no present plans to come to the west coast** except possibly to attend the trial in this matter." [emphasis added.] Lopez never specifically stated he would refuse to travel to San Diego for his deposition, and/or that Lopez was not able to travel to San Diego for some reason. Indeed, given Lopez's continuing ties to San Diego – including his pending litigation (at least three state actions) and business activities – it appears reasonable for Lopez to expect to travel to San Diego on a somewhat regular basis. For example, Lopez's Motion correctly states that Lopez and Stanly have been involved in litigation with each other for the past few years. And significantly, three of those cases were filed by Lopez (two San Diego Superior Court actions, and one San Diego appeal), and all of the cases were filed in various courts in San Diego County. These matters have not concluded, and therefore Lopez must anticipate future travels to San Diego. Against this background, Lopez offers no affirmative reason why his traveling to San Diego imposes a greater burden upon him than the burden that would be imposed upon the petitioning creditor of having both Mr. Stanly and his attorney travel to Florida to conduct the deposition. That leaves nothing for the Court to balance against the petitioning creditor's burden, when the Court performs the "*balancing test*" required by the Federal Rules, and the balance necessarily tilts in favor of compelling the deposition to be conducted in California.[2]

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[1] See, Motion for Protective Order, page 2, line 27 (emphasis added).

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II

LOPEZ'S MOTION FAILS TO ESTABLISH THAT CONDUCTING HIS DEPOSITION IN SAN DIEGO WOULD BE UNDULY BURDENSOME

Rule 26 of the Federal Rules of Civil Procedure, made applicable to these proceedings by Rules 7026 and 9014 of the Federal Rules of Bankruptcy Procedure, requires that a party moving for a protective order demonstrate that the requested discovery would be "unduly burdensome." [3]

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[2] Petitioning creditors have already communicated their willingness to conduct the deposition in the offices of Mr. Lopez's attorney, rather than their own if need be.

[3] *Benchmark Design, Inc. v. BDC, Inc.*, 125 F.R.D. 511, 512 (D.Or. 1989); *U.S. v. $160,066.98 from Bank of America*, 202 F.R.D. 624, 626 (S.D.Cal. 2001) ("The burden is on the person seeking the protective order to demonstrate good cause").

To meet its burden, the moving party must establish that the requested discovery will result in "more than some expense or difficulty, especially in the case of a party to the action." [4] The moving party must provide specific factual evidence to support his objections, and "conclusory allegations regarding expense and inconvenience" are not sufficient. [5]

Lopez ignores his burden and provides nothing but irrelevant statements and patently "*conclusory allegations*" to support his Motion. He first asserts that none of his creditors "*have any particular nexus to California*." [6] Even if that were true – which it is not – it has no bearing on the alleged burden on Lopez in traveling to California for a deposition. Next, he complains that it would be "*incredibly unfair*" to require Lopez to come back to San Diego for his deposition — leaving unanswered the question: Why? None of his statements are supported by any specific facts other than a reiteration of his residential status – he currently lives in Florida with his wife and children, and works in Florida with his wife at the business they started together. So why is that a legally cognizable burden? Simply put, he invites the Court to speculate about facts as to which he is unwilling to testify. The Court should decline that invitation.[7] Without more, the meager facts disclosed do not even come close to demonstrating that Lopez would suffer the requisite "undue burden" if he were required to attend his deposition in San Diego.[8] Even the case Lopez cites in his own Motion (at page 4, line 28) emphasizes that a party must fully "*describe any peculiar reasons*" why the party should not be compelled to travel to a deposition scheduled by the other party.[9] Lopez has failed to do that here, and his Motion must therefore be denied.[10]

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4 *Id.*

5 *Id.*

6 See, Motion for Protective Order, page 2, lines 18-19.

7 See, Motion for Protective Order, page 4, lines 18 -20 & 25-27.

8 *Benchmark Design, Inc. v. BDC, Inc.*, supra, 125 F.R.D. at 512.

9 *Morin v. Nationwide Federal Credit Union*, 229 F.R.D. 362, 363 (D.Conn. 2005).

10 *Id.*

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Finally, Lopez asserts that the present involuntary bankruptcy petition filed against him is "spurious" and therefore requiring Lopez to travel to the jurisdiction where the petition is pending "*is over the top*".[11] Again, Lopez's hyperbolic rhetoric is unsupported by any evidence. More importantly, it has no bearing on the standard for a protective order under FRCP 26.

III

LOPEZ'S DEPOSITION SHOULD BE CONDUCTED IN CALIFORNIA– THE JURISDICTION WHERE THE ACTION IS PENDING, AND WHERE ALL ATTORNEYS OF RECORD CAN EASILY ATTEND

An out-of-state party will be compelled to appear for a deposition in the jurisdiction where the action is pending where, as here, both parties have retained local counsel, and the action involves business conducted in the jurisdiction where the action is pending.[12]

In this case, it would be more efficient and cost-effective for Lopez to travel to California. Stanly and his counsel are prepared to travel to the office of Lopez's attorney in Woodland Hills. That is far more equitable and reasonable than requiring Stanly to pay for himself and his San Diego counsel to fly to Florida to conduct the deposition.[13] The involuntary petition was filed against Lopez in San Diego, based on claims arising from Lopez's business activities in San Diego. Two of the three petitioning creditors are located in San Diego. Thus California is the proper place to conduct the deposition.[14]

IV

DOCUMENT REQUESTS 1, 2, 4 & 8 ARE PROPER

Lopez objects to Requests 1, 2, 4 and 8 of the Request for Production of Documents included with the Deposition Subpoena. The objections are improper and should be overruled.

Request 1 requires production of:

---

[11] See, Motion for Protective Order, page 3, lines 1-2.

[12] *U.S. v. $160,066.98 from Bank of America*, supra, 202 F.R.D. at 627-628; *Benchmark Design, Inc. v. BDC, Inc.*, supra, 125 F.R.D. at 512.

[13] *U.S. v. $160,066.98 from Bank of America*, supra, 202 F.R.D. at 628.

[14] *Id.* at 627.

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> True and correct copies of any and all written agreements between YOU and Noveon Systems, Inc. This request includes, but is not limited to, any and all license agreements between YOU and Noveon Systems, Inc.

This Request is appropriate given that Lopez already agreed and promised to produce these documents at his Judgment Debtor Exam, conducted on May 9, 2005. See, Exhibit 5 to Declaration of Alan Stanly.

Request 2 requires production of: "Any and all tax returns YOU filed for the 2001 and 2004 calendar years."

Lopez's only objection to this Request is that tax returns are "*privileged*" and therefore protected from disclosure during discovery. Lopez's objection does not address the rule that the California state law privilege against disclosure of an individual's tax returns does not apply in federal actions of this type (i.e. where Federal law provides the rule of decision).[15] Lopez has already voluntarily produced copies of his 2002 and 2003 personal tax returns, and agreed to produce copies of his 2004 tax returns once those had been prepared/filed. See, Exhibit 5 to Declaration of Alan Stanly. Based on that, any applicable privilege against disclosure of additional tax returns has been waived.[16]

Request 4 requires production of:

> Any and all DOCUMENTS evidencing any and all payments YOU have made for legal services during the time period of June 30, 2004 through the present. This request includes, but is not limited to, Any and all checks YOU issued to YOUR attorneys to pay for legal services.

This Request properly seeks documentary evidence relevant to Stanly's accurate assessment of Lopez's creditors.

Request 8 requires production of:

> Any and all DOCUMENTS which YOU believe support YOUR claim that the involuntary petition filed herein "was filed in bad faith" as alleged in Paragraph 7 of YOUR ANSWER.

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15 *Young v. U.S.* 149 F.R.D. 199, 200 (S.D.Cal. 1993).

16 *Id.* at 205.

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This Request is obviously calculated to lead to the discovery of admissible evidence, and is essential to enable Stanly to rebut Lopez's asserted defense.

V

CONCLUSION

Like his companion Motion to Dismiss, this request for a Protective Order is a motion in search of support. At this stage of the 21st century, a requirement to travel across the continental United States cannot be considered a per se "*undue burden*" upon a litigant. In order to effectively depose Lopez, someone must travel. Conducting the deposition in the State of California confines that imposition to a single person, and actually minimizes the expense burden of his deposition. Conversely, forcing Stanly[17] and his counsel to fly to Florida doubles the burden and expense of the unavoidable travel. Lopez offers no evidence or explanation as to why the higher, rather than the lesser, burden should be imposed. That failure robs his Motion of all validity, and it must be denied.

Dated: March 29, 2006

ROBBINS & KEEHN
A Professional Corporation

By: //s// L. Scott Keehn
L. Scott Keehn
Attorneys for Petitioning Creditor
Alan Stanly

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17 Mr. Stanly's availability to assist counsel during the deposition is indispensable.

DOCKET NUMBER 43

L. Scott Keehn (61691)
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Attorneys for **Moving Creditor, ALAN STANLY**

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

In Re: FRANCIS J. LOPEZ Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **ALAN STANLY'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS INVOLUNTARY PETITION** **Date:** April 3, 2006 **Time:** 11:00 a.m. **Ctrm:** 4

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I

INTRODUCTION

The Motion to Dismiss provides cause for both encouragement and alarm. It is encouraging to the extent that it reflects Lopez's intention to commit his assets to the satisfaction of his debts; but it alarmingly reveals his return to past practices of hood-winking courts and the parties before them so that he can abscond with assets earmarked for the satisfaction of claims.[1] Unfortunately, whatever encouragement can be gleaned from the Motion appears to be eclipsed by the sense of *deja-vu* created by what appears to be just another attempt to lull the Court with a false promise of payment to cover a covert usurpation of assets.[2]

That relegates us to looking to the substantive merit of the motion, and of that there is none. The Motion is an attempt to establish a payment plan (a *plan of reorganization* as bankruptcy practitioners might say) in Chapter 7 — the one Chapter in the Code where no such Plan was ever contemplated by Congress. It takes that impossible proposal, and makes it more egregious by imposing upon unnoticed creditors an impermissible disparity of treatment in the general unsecured class of claims depending upon the *liquidated* or *unliquidated* nature of the claim. Not surprisingly, Lopez cites not a single authority to support the requested relief. There is none. The Motion can only be denied.

II

FACTUAL CHRONOLOGY OF PERTINENT EVENTS[3]

1994: Stanly formed Computer Handyman, Inc. which was later renamed Prism Advanced Technologies, Inc.

1996: Stanly gave Lopez 50% interest in Prism Advanced Technologies, Inc. ("Prism"). Prism was a California corporation that created, authored and licensed transportation software; and sold computer hardware and services.

11/2002 -

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[1] See, Part III C below regarding the secret sale of Lopez's Carlsbad residence in 2003 in violation of a "no sale" stipulation, and Lopez's subsequent flight (with the proceeds) to Florida.

[2] *Id.*

[3] The facts herein are supported by the Declaration of Alan Stanly, filed concurrently herewith.

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03/2003:	Dispute arose between Stanly and Lopez regarding personal expenditures Lopez made with Prism's funds; In addition, Stanly learned Lopez had used Prism funds to start a competing business.
04/2003:	Lopez and Stanly stipulated to appoint Richard Kipperman as receiver to run Prism's affairs. In or about July 8, 2003, the receiver ceased Prism's operations.
04/03/2003:	Lopez filed *Prism Advanced Technologies, Inc. and Lopez v. Stanly*, San Diego Superior Court Case Number GIN 028765, wherein Lopez claimed civil harassment, and sought Stanly's ejection from Prism's business premises. No hearing on the merits was ever held in this action.
04/30/2003:	Letter from Union Bank of California to Stanly and Lopez demanding payment on a Prism bank loan (approx. $300,000), personally guaranteed by both Stanly and Lopez. Union Bank's representative, Adam Karrer, emphasized to Lopez that, if necessary, Union Bank would vigorously pursue Lopez's personal assets to satisfy the obligation.
05/14/2003:	Lopez filed *Lopez and Prism Advanced Technologies, Inc. v. Stanly*, San Diego Superior Court Case Number GIN 029692 which sought money damages.
06/03/2003:	Letter from Pacific Carlsbad Partners to Stanly and Lopez requesting payment on an outstanding balance of a promissory note executed by Prism, and personally guaranteed by both Stanly and Lopez. The letter states that Pacific Carlsbad will seek a writ of attachment if a civil collection action is filed.
06/26/2003:	Union Bank of California filed a civil collection action entitled *Union Bank of California v. Lopez*, San Diego Superior Court Case Number GIN 030827; and Pacific Carlsbad Partners filed a civil collection action entitled *Pacific Carlsbad Partners, LLC v. Prism Advanced Technologies, Lopez and Stanly*, San Diego Superior Court Case Number GIC 813397.
07/03/2003:	"Stipulation for Temporary Protective Order" filed in *Pacific Carlsbad Partners, LLC v. Prism Advanced Technologies, Lopez and Stanly*, whereby **Stanly and Lopez each stipulate not to sell their residential real property** – assets which could be used to pay the outstanding balance on the note owed to Pacific Carlsbad Partners– **until at least August 8, 2003, the date of the hearing on Pacific Carlsbad Partners's Application for Writ of Attachment.**
07/18/2003:	**Lopez violates the Stipulation for Temporary Protective Order filed on 07/03/2003, sells his Carlsbad residence – for a price that is below fair market value, and on a shortened escrow – and flees to Florida.**[4]
08/22/2003:	Involuntary Chapter 7 Bankruptcy Petition filed against Prism in the United States Bankruptcy Court for the Southern District of California, Case

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[4] See also, Lopez Declaration in Support of Motion to Dismiss, ¶2 ("I have been a permanent resident of Florida since July, 2003 when I and my family moved there from California"). Lopez "*Does it to his creditors once — shame on him.*" Now he seeks an opportunity to do it to us twice.

Number 03-07777.

09/20/2004: Judgment entered against Lopez in favor of Stanly in the principal amount of $50,000 in *Union Bank of California v. Lopez*, San Diego Superior Court Case Number GIN 030827. Interest begins to accrue on that judgment at the statutory rate of 10% per annum.[5]

11/30/2004: Lopez filed a Notice of Appeal of the judgment entered in *Union Bank of California v. Lopez*, in the California Court of Appeal, Fourth Appellate District, Division 1 (San Diego), Case Number: D045451. The appeal is currently stayed, pending the outcome of Lopez's involuntary bankruptcy case. Lopez's California attorneys file quarterly status reports with the Court of Appeal regarding Lopez's bankruptcy (last status report filed on 01/11/2006).

06/30/2005:

- Involuntary Chapter 7 Bankruptcy Petition filed herein against Lopez.
- As of this date, Stanly held an undisputed, liquidated claim against Lopez in the amount of 53,877.10,[6] and disputed and unliquidated claims against Lopez (acquired in the purchase of Prism's assets) in the approximate amount of $500,000. In addition, Greg Akers, the Chapter 7 Trustee in the Prism Case, holds insider preference avoidance claims in at least the amount of $25,000.
-

12/21/2005: Creditor Northwest Florida Daily News filed Joinder in Involuntary Petition for Francis J. Lopez. [Docket Number 36]

12/21/2005: Creditor Alternative Resolution Center filed Joinder in Involuntary Petition for Francis J. Lopez. [Docket Number 37]

02/22/2006: Without notice to any creditors, Lopez listed his Florida residence (a 5-bedroom, custom-built home in a prestigious, gated community) for sale, through listing agent Coastal Properties of N.W. Florida. The list price is $1,295,000.00.

03/27/2006:

- Stanly learns – for the first time – that Lopez has listed his Florida residence for sale, when the Florida process service who is attempting to personally serve Lopez with a Deposition Subpoena sees the For Sale sign, and lock box, on Lopez's vacant residence.
- Lopez files a de facto "Plan" of reorganization masquerading as a motion to dismiss the case. But he fails to give notice to all creditors or to provide treatment to the disputed and unliquidated creditor body.
-

04/07/2006: Date escrow is scheduled to close on the sale of Lopez's Florida residence.

---

[5] Cal. Code of Civil Procedure §§685.010 [10% per annum] and 685.020(a) [interest begins to accrue upon entry of judgment].

[6] Includes interest from September 20, 2004 to June 30, 2005 (283 days of interest at $13.70 per day).

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III

DISCUSSION

A. LOPEZ'S MOTION TO DISMISS IS PROCEDURALLY DEFECTIVE AND SUBSTANTIVELY INDEFENSIBLE

1. Procedural Defects: Inadequate Notice and No Supporting Authority.

"All creditors of the alleged debtor have standing to object to the proposed dismissal; they need not meet the qualifications necessary to initiate or join in an involuntary petition." [7] Here, the Proof of Service filed with Lopez's Motion to Dismiss establishes that the only creditors who have received notice of the Motion are the three petitioning creditors: Alan Stanly, Northwest Florida Daily News, and Alternative Resolution Center. Given that a bankruptcy court will not dismiss a case unless it finds dismissal to be in the best interest of *all* of the parties, *all* of an alleged debtor's creditors must be notified of a request for dismissal, and given an opportunity to object.[8] Section 303(j) of the Bankruptcy Code specifically states that an involuntary bankruptcy petition may not be dismissed without notice to "all creditors." The purpose of the notice requirement is to protect the non-petitioning creditors from a collusive dismissal.[9] Here, Lopez's failure to provide all of his creditors with notice of his Motion is fatal to the Motion, and the Motion should be denied.

The second procedural defect in the Motion springs from the substantive flaw described in part (2) below. Specifically, Lopez has ignored the — not insignificant — procedural requirement imposed by LBR 9014-2(b) which clearly mandates that all motions be supported and "*accompanied by ... a memorandum of points and authorities upon which the movant is relying*." On the face of the moving papers, it is clear that this requirement has been ignored. A thoughtful analysis of the relief requested reveals the reason for the omission: There is no authority to support dismissal under these circumstances or by utilization of the mechanism proposed.

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[7] *In re Taub*, 150 B.R. 96, 98 (Bkrtcy. D.Conn. 1993).

[8] 11 U.S.C. §§303(j); 305(a)(1).

[9] *In re Rajneesh Neo-Sannyas Intern. Commune*, 59 B.R. 49, 51 (Bkrtcy. D.Or. 1986).

2. Fatal Substantive Flaw: No Legal Authority

Lopez should not be granted the requested relief without – *at a minimum* – being required to cite to some authority indicating that the relief he requests is in fact available, and within the Court's power to grant. Alas, there is no authority because the Motion is – in effect – a *de facto* "Plan" of reorganization. Lopez's Motion consists entirely of a proposed payment plan, the likes of which are available within the statutory framework of a Chapter 11 or Chapter 13 case –but not one in a Chapter 7. There is no existing legal authority that would allow a Chapter 7 debtor to exit the proceedings with a de facto "Plan." Beyond that, the provisions of this plan, which first ignore, and then provide a disparate treatment of disputed and unliquidated claims, make this specific proposal intensely inapposite to the policies of the Bankruptcy Code. Ratable distribution to all creditors — as determined by the definition of §101(5), not just those described in §303 (b) — is an overarching principle and goal of the Bankruptcy Code. Specifically:

> The purpose of bankruptcy law is to equitably adjust the relationship between a debtor and its creditors, ratably distributing limited assets among competing claimants in accordance with the federally-mandated priority scheme.[10]
>
> A purpose of bankruptcy is so to administer an estate as to bring about a ratable distribution of assets among the bankrupt's creditors.[11]
>
> ...historically one of the prime purposes of the bankruptcy law has been to bring about a ratable distribution among creditors of a bankrupt's assets..."[12]
>
> It is the purpose of bankruptcy to cause whatever assets the bankrupt has to be distributed ratably among the creditors.[13]

Lopez's proposed plan throws the ratable distribution concept out the window. It addresses only the non-contingent and liquidated claims — those described in §303(b) — and makes no provision for the known unliquidated claims. So under the Lopez *de facto* Plan, the liquidated

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[10] *In re Auto Parts Club, Inc.*, 224 B.R. 445, 447 (Bankr. S.D. Cal. 1998).

[11] *Vanston Bondholders Protective Committee v. Green*, 329 U.S. 156, 161 (1946).

[12] *Young v. Higbee Co.*, 324 U.S. 204, 210 (1945).

[13] *Hassen v. Jonas*, 373 F.2d 880, 881 (9th Cir. 1967).

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claims get paid (presumably 100%), while the unliquidated claim holders get to chase Lopez for whatever may be left. But insofar as the Bankruptcy Code is concerned, both the liquidated and the unliquidated claims occupy the same level of priority — general unsecured claims. Thus the Lopez *de facto* is a scheme that is at odds with the most fundamental underpinnings of the Bankruptcy Code. It can not be put into effect.

If Lopez has a passion for proposing a plan, then he should embrace rather than resist the bankruptcy process, consent to an order for relief under Chapter 11 (or 13 if he qualifies), and move forward with his plan. As it is, he is asking this Court to deprive all creditors of the protections afforded by those chapters that enable debtors to propose restructuring plans. That circumvention is an anathema to the Bankruptcy Code, and this Court should have no part in such a perversion of the Code's most salutary policies.

B. LOPEZ FAILS TO ESTABLISH THE REQUISITE "CAUSE" FOR DISMISSAL

11 U.S.C. §707 governs the dismissal of a Chapter 7 case, and is the beginning point of the Court's analysis of this Motion. Subsection (a) provides a non-exclusive list of what constitutes sufficient "cause" for dismissal, including:

> (1) unreasonable delay by the debtor that is prejudicial to creditors;
> (2) nonpayment of any fees or charges required under chapter 123 of title 28; and
> (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521, but only on a motion by the United States trustee.

Here, Lopez's Motion requests dismissal in order to facilitate the close of escrow – **currently scheduled for Friday, April 7, 2006** – on the sale of his Florida home. See, Motion to Dismiss, page 2, lines 13-15 ("The sale escrow cannot close without the [dismissal] order because of the 'cloud' on title created by this case"). Certainly, facilitating the sale of an alleged debtor's only significant asset – a transaction outside the ordinary course of the debtor's business, and without notice to any creditors – cannot be the sort of "cause" Congress intended to support a dismissal under Section 707.

Lopez's ostensibly magnanimous gesture of using the proceeds from the sale to pay all the

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creditors he listed in his Answer is likewise insufficient to support a dismissal.[14] Significantly, Lopez's "full payment" proposal is based on hopelessly incomplete information: He proposes to sell certain real property without providing any evidence whatsoever as to: (1) the fair market value of the property, (2) the agreed-upon sale price for the property, (3) existing encumbrances on the property, (4) his projected net proceeds, (5) his tax basis in the residence, and/or (6) the tax consequences to the estate (without dismissal) of the sale under its currently terms. Without those fundamental, foundational facts, this Court lacks the evidentiary springboard upon which to take the suggested leap to the conclusion that dismissal would be in the best interest of *all* of Lopez's creditors.[15] Lopez asks the Court and creditors to make that leap on faith alone. The impropriety of that request is self-evident.[16]

Lopez's dismissal plan does not even purport to treat all similarly-situated creditors equally. Rather, types of creditors within the same class would be treated differently. Specifically, Lopez has proposed one plan for creditor Wayne Wise (upon sale of Lopez's residence, immediately pay the full amount claimed), another plan for Petitioning Creditor Alan Stanly (an amorphous "bond" scheme which, at best, *may* result in Stanly receiving the outstanding principal amount owed on his judgment without any of the accrued interest), another plan for each of the remaining creditors Lopez chose to list in his Answer (negotiate a "resolution" with each creditor regarding how much Lopez actually owes), and significantly, no plan whatsoever for those creditors who have disputed and/or unliquidated claims. Such disparate treatment is patently

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[14] *Matter of Nina Merchandise Corp.*, 5 B.R. 743, 746 (Bkrtcy. N.Y. 1980) ("dismissal should not be granted because of the ability of the debtor to pay off some or all outstanding creditors").

[15] *In re Rajneesh Neo-Sannyas Intern. Commune*, supra, 59 B.R. at 52 (bankruptcy court would not dismiss an involuntary Chapter 7 case where the dismissal would "not assure equal treatment for the unsecured creditors who would share pro-rata in a Chapter 7"); see also, *In re Auto Parts Club, Inc.*, supra, 224 B.R. at 447 ("The purpose of bankruptcy law is to equitably adjust the relationship between a debtor and its creditors, ratably distributing limited assets among competing claimants in accordance with the federally-mandated priority scheme").

[16] This *leap of faith* is made all the more inappropriate when considered in light of Lopez's past misconduct in similar circumstances discussed in part C below.

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improper in the context of any chapter,[17] and should be flatly rejected.

C. LOPEZ HAS DEMONSTRATED THAT HE IS NOT TRUSTWORTHY — HIS EXIT FROM BANKRUPTCY REQUIRES COURT SUPERVISION

Lopez has already demonstrated his willingness to dishonor promises made to a court and other parties in pending litigation.[18] Ominously, Lopez appears to be setting up precisely the same forensic scam he used to hinder and evade his creditors in 2003 – sell his residence and flee with the proceeds. In July 2003, just 15 days after executing a written stipulation promising not to sell his Carlsbad residence, Lopez sold that residence and fled to Florida. Now, only a few years later, when aggressive creditors have once again caught up with him, Lopez is attempting to sell his residence – the only significant asset available to satisfy the outstanding claims. Significantly, Lopez listed the Florida residence for sale on February 22, 2006, without any notice whatsoever to the Court or any of the creditors in this case. Lopez remained silent about the sale at the status conference held by this Court on March 20, 2006 – even though at that point the property had been on the market for approximately a month — and that sale was the obvious source of money needed to fund the *pay-and-dismiss* concept discussed at that hearing.

Stanly only recently learned that Lopez's residence was actually for sale when he attempted to serve Lopez with the deposition subpoena in this action, and the Florida process server discovered the For Sale sign, and lock-box on the residence door. Even Lopez's own Motion never clearly discloses the fact that he has already found a buyer for the property, or that it is in escrow, and ready to close. Instead, the Motion is artfully worded to convey the impression that Lopez and

his wife only recently decided to put the property on the market for the purported purpose of

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[17] Absent the express consent of all creditors that receive something less than the best treatment given to any member of the class (see e.g. §1124(a)(4)).

[18] See Part II above and Stanly Declaration [Regarding his promise not to liquidate his Carlsbad residence prior to an attachment hearing followed by his dishonor of the promise, sacrificial (below the market) sale of that residence, and flight to Florida].

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paying creditors.[19]

Given his acts of banditry in earlier proceedings before the Superior Court, and his current lack of candor with respect to his most significant asset, it is clearly essential to keep this debtor safely corralled inside the confines of an orderly bankruptcy proceeding. Lopez provides no evidence to suggest that he can or should be trusted to act in the best interest of his creditors without being forced to do so by this Court; and there is ample evidence to show his propensity to use dishonesty and sharp practices to the detriment of his creditors. There is just no escaping the obvious need to keep Lopez under judicial supervision to insure that he delivers what he promises.

IV

CONCLUSION

There is absolutely no authority that permits the relief requested. The Motion would pervert rather than promote the policies upon which the Bankruptcy Code is grounded, and robs most of the creditor constituencies of notice and opportunity to be heard. It is poorly conceived and beyond repair. For these and all of the forgoing reasons the Motion must be denied.[20]

Dated: March 29, 2006

ROBBINS & KEEHN
A Professional Corporation

By: //s// L. Scott Keehn
L. Scott Keehn
Attorneys for Petitioning Creditor
Alan Stanly

---

[19] See, Motion to Dismiss, page 2, lines 12-14 ("Mr. Lopez and his wife have recently agreed to sell their home and the proceeds of the sale will be sufficient to pay all creditors in full").

[20] However, to the extent that what the Motion really reflects is Lopez's first step in facing and dealing with his creditors, then that step is to be applauded. The petitioning creditors encourage Lopez to hasten the day when repayment will be realized by consenting to the entry of an Order for Relief under the chapter of his choosing. Prompt action in that direction may even permit his estate to preserve and perform the pending sale (or a better one) — which also hastens the day that Lopez can receive the cash benefit of his homestead exemption.

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

In Re: FRANCIS J. LOPEZ Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **DECLARATION OF ALAN STANLY** **Date:** April 3, 2006 **Time:** 11:00 a.m. **Ctrm:** 4

I, ALAN STANLY, declare:

1. I am over the age of 18, and am the Petitioning Creditor in this Involuntary Bankruptcy proceeding. I have first-hand knowledge of all the following facts, and if called as a witness could and would competently testify thereto.

2. I am a computer programmer, and software developer. In 1994, I formed Computer Handyman, Inc. which was later renamed Prism Advanced Technologies, Inc.

3. In 1996, I gave Lopez 50% interest in my company, Prism Advanced Technologies, Inc. ("Prism"). I retained the other 50% of Prism. Prism was a California corporation that created, authored and licensed transportation software; and sold computer hardware and services.

4. During the period of November 2002 through March 2003, my relationship with

Lopez deteriorated when I discovered that Lopez had been using Prism's money to pay for his own personal expenditures. In addition, I learned Lopez had used Prism funds to start a competing business.

5. On April 3 2003, Lopez filed a civil action against me entitled *Prism Advanced Technologies, Inc. and Lopez v. Stanly*, San Diego Superior Court Case Number GIN 028765, wherein Lopez claimed civil harassment, and sought to have me ejected from Prism's business premises. No hearing on the merits was ever held in this action.

6. In April 2003, Lopez and I stipulated to appoint Richard Kipperman as receiver to run Prism's affairs. In or about July 8, 2003, the receiver ceased Prism's operations.

7. On April 30, 2003, Lopez and I received a letter from Union Bank of California which demanded payment on a Prism bank loan (approx. $300,000), personally guaranteed by both Lopez and I. A true and correct copy of that letter is attached hereto as Exhibit 1. Union Bank's representative, Adam Karrer, emphasized to Lopez that, if necessary, Union Bank would vigorously pursue Lopez's personal assets to satisfy the obligation.

8. On May 14, 2003 Lopez filed another civil action against me entitled *Lopez and Prism Advanced Technologies, Inc. v. Stanly*, San Diego Superior Court Case Number GIN 029692 which sought money damages.

9. On June 3, 2003, Lopez and I received a letter from Pacific Carlsbad Partners which requested payment on an outstanding balance of a promissory note executed by Prism, and personally guaranteed by both Lopez and I. The letter states that Pacific Carlsbad will seek a pre-judgment writ of attachment if a civil collection action is filed. A true and correct copy of that letter is attached hereto as Exhibit 2.

10. On or about June 26, 2003, two civil collection actions were filed against me, Lopez and Prism: (1) *Union Bank of California v. Lopez*, San Diego Superior Court Case Number GIN 030827; and (2) *Pacific Carlsbad Partners, LLC v. Prism Advanced Technologies, Lopez and Stanly*, San Diego Superior Court Case Number GIC 813397.

11. On July 03, 2003, a "Stipulation for Temporary Protective Order" was filed in *Pacific Carlsbad Partners, LLC v. Prism Advanced Technologies, Lopez and Stanly*, whereby both

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Lopez and I each stipulated not to sell our residential real property – assets which could be used to pay the outstanding balance on the note owed to Pacific Carlsbad Partners– until at least August 8, 2003, the date of the hearing on Pacific Carlsbad Partners's Application for Writ of Attachment. A true and correct copy of that Stipulation is attached hereto as Exhibit 3.

12. Fifteen days later (July 18, 2003), Lopez violated the Stipulation for Temporary Protective Order filed on 07/03/2003 by selling his San Diego County residence – for a price that was below fair market value and on a shortened escrow– and fled to Florida, thereby evading service of process by creditor Union Bank in the *Union Bank of California v. Lopez* case.

13. On August 22, 2003, an Involuntary Bankruptcy Petition was filed against Prism in this Court (Case Number: 03-07777). On December 24, 2003, this Court approved my purchase of all of Prism's assets, including potential tort and other claims against Lopez. [Docket Number 120.]

14. On September 20, 2004, a Judgment was entered against Lopez, in my favor, in the principal amount of $50,000 in *Union Bank of California v. Lopez*, San Diego Superior Court Case Number GIN 030827. A true and correct copy of that Judgment is attached hereto as Exhibit 4.

15. On May 9, 2005, I had a Judgment Debtor's Exam of Lopez conducted in connection with the Judgment I was awarded in *Union Bank of California v. Lopez*. In that examination, Lopez agreed to produce certain documents to me – including licensing agreements between himself and his new business (Noveon Systems, Inc.), and his 2004 tax returns. At that Debtor's Exam, Lopez produced his personal 2002 and 2003 tax returns, but could not produce the 2004 returns because he had not yet filed them (he had filed for an extension of time to file his 2004 returns). True and correct copies of those relevant portions of Lopez's Judgment Debtor's Exam are attached hereto as Exhibit 5.

16. On June 30, 2005, I filed this Involuntary Chapter 7 Bankruptcy Petition against Lopez. As of this date, I held a liquidated claim against Lopez for the outstanding judgment awarded to me in *Union Bank of California v. Lopez* (and whatever interest had accrued on that Judgment as of this date); and I also held disputed and unliquidated claims against Lopez.

17. On March 27, 2006, I learned – for the first time – that on February 22, 2006,

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Lopez had listed his Florida residence for sale. I learned that when the Florida process service I hired to personally serve Lopez with a Deposition Subpoena in this proceeding, went to Lopez's Florida residence, the process server saw a For Sale sign, and lock box, on Lopez's residence, and saw that the residence had been vacated. I then located and reviewed the Internet listing for Lopez's Florida residence, which describes Lopez's residence as a 5-bedroom, custom-built home in a prestigious, gated community. Lopez's listing agent is Coastal Properties of N.W. Florida. The sale price for Lopez's home is listed at $1,295,000.00. A true and correct copy of that listing is attached hereto as Exhibit 6.

18. Yesterday, on March 28, 2006, I personally spoke via telephone with Lopez's listing agent, Camille Collins. Based on that conversation, I now know that Lopez has found a buyer for his Florida residence, and escrow is scheduled to close on that sale next Friday April 7, 2006. Although the information I acquired from Ms. Collins indicates that the residence is being sold at a fair price, I am very alarmed by this pending liquidation because Lopez's Florida residence is the only significant asset available to satisfy his creditors' claims. In addition, I know from first-hand experience, that Lopez has already sold one residence (the Carlsbad residence) for the purpose of avoiding his creditors, and it now appears that if the recorded Notice of this bankruptcy case had not stymied his sale, he would have gotten away with doing the same thing again. Based on that, I firmly believe that only if Lopez's assets are administered in the context of a bankruptcy case, will creditors have any hope of a ratable distribution of available assets.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration was executed on March 29, 2006 at San Diego, California.

Alan Stanly

ALAN STANLY

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DOCKET NUMBER 44-1

EXHIBIT 1

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April 30, 2003

VIA CERTIFIED AND REGULAR MAIL

Mr. Francis J. Lopez
5461 Los Robles Drive
Carlsbad, California 92008

RE: Credit (the "Credit") extended by Union Bank of California, N.A. (the "Bank") to Prism Advanced Technologies, Inc.(the "Borrower") pursuant to that certain Business Loan Agreement dated February 14, 2002, executed by the Borrower and the Bank (the "Agreement"), and as further evidenced by that certain Commercial Promissory Note dated February 28, 2003, executed by the Borrower and payable to the Bank's order, in the principal amount of $300,000 (the "Note"), which Credit has been guaranteed pursuant to certain Continuing Guaranties in the amount of $300,000 dated February 5, 2002 executed by Alan Stanly and Francis J. Lopez ("Guarantors") for the benefit of the Bank (the "Guaranties").

Dear Mr. Lopez:

This office represents the Bank in connection with the Credit referenced above.

The Credit matured on April 29, 2003. On that date, all amounts of principal and accrued, unpaid interest outstanding and other sums otherwise owed under the Agreement and the Note, together with all other costs and fees owed to the Bank under all agreements, documents and instruments entered into in connection with the Agreement and Note, were immediately due and payable in full to the Bank. The Borrower has failed to fully satisfy such obligations to the Bank. Pursuant to the terms of the Agreement and Note, no notice or demand is required for the Borrower to be obligated to immediately pay to the Bank all amounts outstanding under the Note. Nonetheless, the Bank has previously given Borrower oral and written notice that the Note was to mature on April 29, 2003. As of April 29, 2003, the principal balance of $295,352.54 remains outstanding under the Note, with additional interest accruing at the rate described below until paid.

Mr. Francis J. Lopez
April 30, 2003
Page Two

Pursuant to the terms of the Agreement and Note, upon default, the Bank is entitled to charge an interest rate equal to the Reference Rate (as defined in the Note) plus 6.5% on any unpaid amounts of principal or interest due under the Note. Accordingly, the Bank has chosen to exercise this right and will begin to charge the Borrower interest at a rate equal to the Reference Rate plus 6.5% on all amounts outstanding under the Note from April 29, 2003, the maturity date of the Note. The Bank's decision to exercise its right to charge the post-default rate of interest is not a waiver of any other right or remedy which may be available to the Bank in connection with the enforcement of the Note, Agreement and Guaranties.

While the Bank has not yet commenced legal or other actions to collect amounts owed by the Borrower to the Bank or to foreclose upon any of its collateral, the Bank expressly reserves, and does not waive, all of its rights under applicable law and the Note, the Agreement, the Guaranties and any other instruments and documents executed by the Borrower or the Guarantors in connection with the Credit, all of which remain in full force and effect. Further, until payment in full of all amounts owed by the Borrower to the Bank, Bank's security interest in, and lien upon, all collateral supporting the Credit and Guaranties shall continue in full force and effect.

If you have any questions, please feel free to contact me at any time.

Sincerely,

Jeffrey Isaacs

JI:sps
cc: Mr. Derek Brunelle
Andrew Serwin, Esq.

999999.901006/400478.01

UNION BANK OF CALIFORNIA

SPECIAL ASSETS DEPARTMENT - SOUTH

Post-it™ brand fax transmittal memo 7671	# of pages ▸ 3
To Francis Lopez	From
Co.	Co.
Dept.	Phone #
Fax # 760 603 9499	Fax #

June 19, 2003

Francis Lopez

Re: Prism Advanced Technologies Inc., Borrower
Alan Stanly, Francis J. Lopez, Guarantors

Francis,

Pursuant to your request I have provided an outline below regarding the current outstanding balances of principal and interest for loan number 714-471-046-8. Please be aware that the information provided below is not intended, nor should it be assumed, to be a payoff amount for the referenced obligation. All information shown below is based on the balance as of June 19, 2003.

Prism Advanced Technologies Inc., Loan Number 714-471-046-8
Principal Outstanding $295,352.54
Interest Payable up to 6/19/03 4,456.96 (Interest is paid up to and including April 29. 2003)

As a reminder, the loan matured on 4/29/03, at which time all payments of principal and interest were due and payable (see letter dated April 30, 2003). Please call if you have any questions pertaining to the information discussed above.

Respectfully,

Adam Karrer (213) 236-6844
Credit Officer

EXHIBIT 2

Treitler & Hager, LLP
Attorneys at Law
3737 Camino del Rio South, Suite 109
San Diego, California 92108

William B. Treitler
Barry E. Hager
M. Andrew Schneider

Telephone (619) 283-1111
Facsimile (619) 528-0746
E-Mail: lawyers@tahlaw.com

June 3, 2003

Via Certified Mail
and Regular Mail

Prism Advanced Technologies, Inc.
Attn: Francis J. Lopez
5962 Priestly Drive
Carlsbad, CA 92008

Francis J. Lopez
5461 Los Robles Drive
Carlsbad, CA 92008

Alan Stanly
1569 Berkshire Court
San Marcos, CA 92069

Re: Demand For Repayment

Dear Mr. Lopez and Mr. Stanly:

Please be advised that the undersigned represents Pacific Carlsbad Partners, LLC ("Pacific Carlsbad"). As you know, Prism Advanced Technologies, Inc. ("Prism") executed a Promissory Note ("Note") dated November 20, 2001 in the principal amount of $75,000.00 payable to Pacific Carlsbad, and Mr. Lopez and Mr. Stanley executed guaranties in connection with the Note.

The entire principal balance of the Note became all due and payable one year after the date of the Note. However, Prism has failed to pay the entire principal balance. At this time, unpaid principal and accrued interest totaling $39,375.01 are overdue. Prism also owes late charges in addition to the above amount. Pursuant to the Guaranties, Mr. Lopez and Mr. Stanly are personally responsible to pay the amounts due and owing pursuant to the Note.

Unless Pacific Carlsbad receives payment in full of the amounts stated above, within five (5) days from the date of this letter, Pacific Carlsbad will enforce its legal rights pursuant to the Note and the guaranties. Additionally, Pacific Carlsbad is informed that the property located on Priestly Drive purchased by Prism from Pacific Carlsbad is currently listed for sale. In the event that the amounts stated above is not paid in full within five days from the date of this letter, Pacific Carlsbad also intends to seek attachment of the property located on Priestly Drive.

Pacific Carlsbad looks forward to receiving payment in full within the time period stated above. This matter deserves your utmost attention.

Sincerely,

Barry E. Hager

BEH:tf
Cc: Pacific Carlsbad Partners, LLC

EXHIBIT 3

BARRY E. HAGER (SBN 137973)
M. ANDREW SCHNEIDER (SBN 219441)
TREITLER & HAGER, LLP
3737 Camino del Rio South, Suite 109
San Diego, California 92108
Telephone: 619 283-1111
Facsimile: 619-528-0746

Attorneys for Plaintiff PACIFIC CARLSBAD PARTNERS, LLC

FILED
Clerk of the Superior Court
JUL 03 2003
By: SCOTT SEYLER, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF COUNTY OF SAN DIEGO

PACIFIC CARLSBAD PARTNERS, LLC, a California Limited Liability Company, Plaintiff, vs. PRISM ADVANCED TECHNOLOGIES, INC., a California Corporation, FRANCIS J. LOPEZ, an individual, ALAN STANLY, an individual, and DOES 1 through 10, inclusive, Defendants.	Case No. GIC 813397 **STIPULATION FOR TEMPORARY PROTECTIVE ORDER** Date: July 3, 2003 Time: 8:30 a.m. Dept: 65

IT IS HEREBY STIPULATED by and between Plaintiff PACIFIC CARLSBAD PARTNERS, LLC, through its attorneys of record, and Defendants FRANCIS J. LOPEZ and ALAN STANLY that a temporary protective order shall issue as follows:

1. FRANCIS J. LOPEZ ("LOPEZ") will not transfer, directly or indirectly, any interest in real property owned by LOPEZ, including, but not limited to, the certain real property located at 5461 Los Robles Drive, Carlsbad, California 92008

2. ALAN STANLY ("STANLY") will not transfer, directly or indirectly, any interest in real property owned by STANLY, including, but not limited to, not to further encumber the certain real property located at 1569 Berkshire Court, San Marcos, California 92069

The temporary protective order shall be effective commencing July 3, 2003 and shall remain in effect through and until the Court's hearing on Plaintiff's Application for Writ of Attachment, which is scheduled for August 8, 2003.

The parties hereby waive any requirement that Plaintiff file an undertaking prior to the issuance of the temporary protective order.

IT IS SO STIPULATED:

Dated: 7/2/03

TREITLER & HAGER, LLP

By [signature]
BARRY E. HAGER
Attorney for Plaintiff
PACIFIC CARLSBAD PARTNERS, LLC

Dated: ____________________

By ____________________
FRANCIS J. LOPEZ

Dated: ____________________

By ____________________
ALAN STANLY

The temporary protective order shall be effective commencing July 3, 2003 and shall remain in effect through and until the Court's hearing on Plaintiff's Application for Writ of Attachment, which is scheduled for August 5, 2003.

The parties hereby waive any requirement that Plaintiff file an undertaking prior to the issuance of the temporary protective order.

IT IS SO STIPULATED:

Dated: ________________ TREITLER & HAGER, LLP

By ________________
BARRY E. HAGER
Attorney for Plaintiff
PACIFIC CARLSBAD PARTNERS, LLC

Dated: 7-2-03

By [signature]
FRANCIS J. LOPEZ

Dated: ________________

By ________________
ALAN STANLY

The temporary protective order shall be effective commencing July 3, 2003 and shall remain in effect through and until the Court's hearing on Plaintiff's Application for Writ of Attachment, which is scheduled for August 8, 2003.

The parties hereby waive any requirement that Plaintiff file an undertaking prior to the issuance of the temporary protective order.

IT IS SO STIPULATED:

Dated: ____________________ TREITLER & HAGER, LLP

By ____________________
BARRY E. HAGER
Attorney for Plaintiff
PACIFIC CARLSBAD PARTNERS, LLC

Dated: ____________________ By____________________
FRANCIS J. LOPEZ

Dated: 7/2/03 By [signature]
ALAN STANLY

7/2/03 AHS pg 2 of 2

EXHIBIT 4

PLEASE COMPLETE THIS INFORMATION.

RECORDING REQUESTED BY:

Alan Stanly

AND WHEN RECORDED MAIL TO:

Alan Stanly
c/o Dillon & Simonsen
4660 La Jolla Village
Suite 775
San Diego, CA 92122

F12
3P
1 mail

DOC # 2005-0437287

MAY 24, 2005 2:47 PM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 17.00
PAGES: 3 NOTICES: 1

THIS SPACE FOR RECORDER'S USE ONLY

Abstract of Judgment

(Please fill in document title(s) on this line)

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(Additional recording fee applies)

9/95
Rec.Form #R25

EJ-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address): TEL NO.:
[X] Recording requested by and return to: (858) 259-2868
Timothy P. Dillon, SBN 190839
Timothy P. Dillon, Esq.
Weintraub Dillon PC
12520 High Bluff Drive, Suite 260
San Diego, CA 92130
[X] ATTORNEY FOR [X] JUDGMENT CREDITOR [ ] ASSIGNEE OF RECORD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
STREET ADDRESS: 325 South Melrose
MAILING ADDRESS: 325 South Melrose
CITY AND ZIP CODE: Vista, CA 92083
BRANCH NAME: North County Division

FOR RECORDER'S USE ONLY

PLAINTIFF: Union Bank of California, N.A.

DEFENDANT: Alan Stanly and Francis Lopez

ABSTRACT OF JUDGMENT [ ] Amended

CASE NUMBER: GIN 030827

FOR COURT USE ONLY

1. The [X] judgment creditor [ ] assignee of record applies for an abstract of judgment and represents the following:
   a. Judgment debtor's Name and last known address
      Francisco Lopez
      310 Sand Myrtle Trl.
      Destin, Florida 32541-3429
   b. Driver's license No. and state: [ ] Unknown
   c. Social security No.: [ ] Unknown
   d. Summons or notice of entry of sister-state judgment was personally served or mailed to (name and address):
      Francis Lopez
   e. [ ] Original abstract recorded in this county:
      (1) Date:
      (2) Instrument No.:
   f. [ ] Information on additional judgment debtors is shown on page two

Date: September 29, 2004
Timothy P. Dillon
(TYPE OR PRINT NAME) (SIGNATURE OF APPLICANT OR ATTORNEY)

2. a. [X] I certify that the following is a true and correct abstract of the judgment entered in this action.
   b. [ ] A certified copy of the judgment is attached.
3. Judgment creditor (name and address):
   Alan Stanly
   1569 Berkshire Court, San Marcos, CA, 92069
4. Judgment debtor (full name as it appears in judgment):
   FranciscoLopez

5. a. Judgment entered on (date): September 20, 2004
   b. Renewal entered on (date):

6. Total amount of judgment as entered or last renewed: $ 50,000.00
7. [ ] An [ ] execution lien [ ] attachment lien is endorsed on the judgment as follows:
   a. Amount: $
   b. In favor of (name and address):
8. A stay of enforcement has
   a. [X] not been ordered by the court.
   b. [ ] been ordered by the court effective until (date):
9. [ ] This judgment is an installment judgment.

[SEAL] SUPERIOR COURT COUNTY OF SAN DIEGO STATE OF CALIFORNIA NORTH COUNTY DIVISION

This abstract issued on (date): SEP 30 2004

Clerk, by ________, Deputy
T. ROBERTS

DOCKET NUMBER 44-2

EXHIBIT 5

Lopez Depo.txt

IN THE CIRCUIT COURT FOR
OKALOOSA COUNTY, FLORIDA
CASE NO. 2004CA004439

FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, NORTH COUNTY BRANCH
CASE NO: GIN 030827

UNION BANK OF CALIFORNIA, N.A.,
A National Banking Association
Plaintiff,

vs.

FRANCIS J. LOPEZ, ALAN STANLY
And Does I through Does IV
Inclusive
Defendants.

AND RELATED CROSS ACTIONS
_______________________________________/

The Deposition of FRANCIS J. LOPEZ taken by the attorney for Alan Stanly, commencing at 2:05 p.m. on the 9th day of May, 2005, at Richard H. Powell & Associates, 92 Eglin Parkway, NE, Fort Walton Beach, Florida, before Wanda M. Pearcey, Court Reporter and Notary Public at Large, in and for the State of Florida.

0

2

APPEARANCES

FOR ALAN STANLY: RICHARD H. POWELL, ESQUIRE
Richard H. Powell & Assoicates
92 Eglin Parkway, NE
Ft. Walton Beach, FL 32549

FOR FRANCIS LOPEZ: JENNIFER A. WINTRODE, ESQUIRE
Attorney at Law
P.O. Box 6944
4481 Legendary Drive, Suite 200
Destin, FL 32550

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FRANCIS J. LOPEZ	
DIRECT EXAMINATION	
BY MR. POWELL	3
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WHEREUPON,

FRANCIS J. LOPEZ

was called as a witness and, after having been first duly sworn, was deposed and testified as follows:

DIRECT EXAMINATION

BY MR. POWELL:

Q. State your full name for the record, please.

A. Francis J. Lopez.

A. As a Florida resident, I can't have an account in California, so they made me transfer it.

Q. It looks like the most recent statement you have is October of 2004. Have you not received any statements since then?

A. I copied everything I did have. They may not be in order, so I don't know if there's something more recent than that. I don't know if you've been through them all

Q. Yes, I have. I don't see anything. Is the account still open?

A. Yes.

Q. Have you received any statements for 2005?

A. I am sure I have.

Q. If you would, then, try to locate those and produce those to your attorney, I would appreciate it.

A. Sure.

Q. What about your tax returns for the last three calendar years, which is item 5 on the list?

A. Okay. I am going to need copies of these.

Q. All right.

A. Okay.

Q. Have you filed for 2004?

A. No, I have not. I filed an extension.

Q. Until August?

A. Yes. I filed an extension, whatever that customary period is. An extension was filed in April.

Q. Okay. On your 2002 return you listed the

A. No.

Q. Airplane?

A. No.

Q. Do you have any life insurance policies on your life?

A. Yes.

Q. Did you bring your documentation on that?

A. Actually I looked for it, but I couldn't find it. I can tell you what it is.

Q. Please do.

A. It's a term policy with Valley Forge Life and it's for 500,000.

Q. What is the annual premium, or is it paid monthly?

A. It's 400 -- somewhere around 450 and 500 per year.

Q. Okay. What is your date of birth?

A. 7/7/61.

Q. Are there any other outstanding judgments that have been entered against you other than the one in the Union Bank of California?

A. That's the only one I'm aware of.

Q. Do you receive any royalties on any assets?

A. No.

Q. The last item on this list is documentation regarding any intellectual property that you currently own or owned in the last three years. What did you bring in regards to that?

A. Well, I think we discussed that. I have --

there is a license agreement.
Q. Did you bring that?
A. I did not bring that, but I told you that I would get a -- make that available to you.
Q. Okay.
A. And we also discussed that I might have listed my intellectual property in the legal case in California, which I would discuss with my attorney and see if he had anything like that.
Q. Other than a licensing agreement with your present employer and whatever documentation that your attorney in California may have, are you aware of any other documentation that would exist regarding intellectual property that you claim ownership in?
A. There is a -- there's documentation in the legal case, there is documentation for my purchase of assets of Metro Consolidation that I don't have with me.

Again, that's on digital format, I can produce that for you.
Q. All right.
A. Then other than what's in the legal papers, I'm not aware of any.
Q. Do you have any objection to your California attorney producing to me the -- any copies of any intellectual property documentation that he has in his possession?
A. I would have to discuss that with my attorney to see if he has an objection. I don't.

DOCKET NUMBER 44-3

EXHIBIT 6

Search for a Property: Select Your State To Buy Search

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View Counter: 46

Contact Information:

House Owner: camille collins
Phone: 850 650 7293
Contact This Owner

Home Information:

Address: 310 Sand Myrtle Trail
City: Destin **State:** Florida **Zip:** 32541

Description: A stunning custom home with all the features a family needs. It has a lovely foyer with an alabaster chandelier, gourmet kitchen, home office, and too many extras to list.A quality home, and the best value in Kelly Plantation, the most prestigious gated community in Destin.

Tell a Friend **Map Direction**

Image Not Available

Image Not Available

closer look closer look closer look closer look

Date Post: 2/22/2006 10:25:56 AM **Price:** $1,295,000.00

Beds: 5 **Baths:** 3.5 **Garage:** 2 **Sq feet:** 4000 - 5000 **Years built:** 1997

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DOCKET NUMBER 47

L. Scott Keehn (61691)
ROBBINS & KEEHN, APC
A Professional Corporation
530 "B" Street, Suite 2400
San Diego, California 92101
Telephone: (619) 232-1700

Attorneys for **Petitioning Creditor, ALAN STANLY**

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

In Re: FRANCIS J. LOPEZ Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **VERIFIED *EX PARTE* APPLICATION FOR AN ORDER APPOINTING AN INTERIM TRUSTEE; AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES, AND DECLARATION OF LESLIE F. KEEHN** **[11 U.S.C. §303(g)]** **Judge: The Honorable Peter W. Bowie** **Dept.: Four**

TO: THE HONORABLE PETER W. BOWIE, UNITED STATES BANKRUPTCY JUDGE:

I. VERIFIED APPLICATION

Pursuant to FRBP 2001(a) and 11 U.S.C. §303(g), Petitioning Creditor Alan Stanly ("Stanly") respectfully submits the following Verified *Ex Parte* Application for an Order Appointing an Interim Trustee. Stanly bases this Application on the following enumerated grounds, as well as the accompanying Memorandum of Points and Authorities, and Declaration of Leslie F. Keehn:

IN SEVEN DAYS, THE DEBTOR INTENDS TO CLOSE THE PENDING SALE OF HIS ONLY SIGNIFICANT ASSET

1. Stanly is aware of only one significant asset owned by alleged debtor Francis J.

ROBBINS & KEEHN, APC
ATTORNEYS AT LAW
2400 UNION BANK BUILDING · 530 "B" STREET
SAN DIEGO, CALIFORNIA 92101
TELEPHONE (619) 232-1700 · TELECOPIER (619) 544-9095

Lopez ("Lopez") – residential real property commonly known as 310 Sand Myrtle Trail, Destin, Florida 32541 (the "Florida Property").

2. On March 28, 2006 Stanly learned – for the first time – that the Florida Property had been listed for sale on February 22, 2006, and that Lopez has found a buyer. **ESCROW IS SCHEDULED TO CLOSE ON THE SALE OF THE FLORIDA PROPERTY NEXT FRIDAY APRIL 7, 2006.** Stanly does not know the agreed-upon sale price, but the Florida Property was listed at a sale price of $1,295,000. A true and correct copy of the Internet listing of the Florida Property is attached hereto as Exhibit 1.

3. Lopez failed to notify Stanly and/or this Court of either one of these critical facts: (1) that the Florida Property had been listed for sale; and (2) that an escrow had been opened, and is scheduled to close on Friday April 7, 2006.

4. No mention of the listing and/or sale of the Florida Property was made at the status conference held before this Court on March 20, 2006, even though at that point the Florida Property had been on the market for approximately a month.

5. The unsupervised liquidation of what may be the estate's only asset of consequence is an extraordinary event. It heightens the risk of loss to the estate by converting a permanent and immovable asset into a liquid and highly mobile asset which is capable of immediate dissipation.

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"PAST BEHAVIOR IS THE BEST PREDICTOR OF FUTURE BEHAVIOR"[1]

6. Lopez appears to be reacting to this Involuntary Petition in precisely the same way he reacted in 2003 when his creditors had finally closed in on him, and were about to collect – he conducted a secret sale of his residential real property (in Carlsbad, California), and absconded to Florida with the proceeds, in violation of a court order and his own stipulation (as explained below). His creditors first learned of Lopez's sale of his Carlsbad property when they attempted to personally serve him with process in the pending litigation against him, and discovered the property had been vacated and sold.

7. Specifically, on June 26, 2003, creditor Union Bank of California filed a civil

---

[1] Federal courts recognize "the truth of the axiom that past behavior is the best predictor of future behavior." *U.S. v. Crawford*, 372 F.3d 1048, 1071 (9^{th} Cir. 2004).

collection action against Lopez, Stanly and Prism Advanced Technologies, Inc. ("Prism") to collect the outstanding balance on a bank loan of approximately $300,000 (*Union Bank of California v. Lopez*, San Diego Superior Court Case Number GIN 030827). Union Bank had loaned the money to Prism, and Lopez and Stanly, as Prism's officers, had each personally guaranteed the loan.

8. The same day (June 26, 2003), creditor Pacific Carlsbad Partners filed a civil collection action against Lopez, Stanly and Prism to collect the outstanding balance on a promissory note of approximately $40,000 (*Pacific Carlsbad Partners, LLC v. Prism Advanced Technologies, Lopez and Stanly*, San Diego Superior Court Case Number GIC 813397). Pacific Carlsbad Partners had loaned money to Prism, and Lopez and Stanly, as Prism's officers, had each personally guaranteed the loan.

9. In both collection actions, the creditors sought to attach the property of both Lopez and Stanly as a prejudgment remedy pending the outcome of the actions. Toward that end, on July 3, 2003, Union Bank obtained a Temporary Protective Order against Lopez and Stanly in which the Court, *inter alia*, specifically restrained Lopez from selling his residential real property commonly known as 5461 Los Robles Drive, Carlsbad, California 92008 (the "Carlsbad Property"). A true and correct copy of that Temporary Protective Order is attached hereto as Exhibit 2.

10. That same day (July 3, 2003), Lopez and Stanly each executed a "Stipulation for Temporary Protective Order" in favor of Pacific Carlsbad Partners whereby Lopez and Stanly promised not to sell their residential real property – including the Carlsbad Property – until at least August 8, 2003, the date of the hearing on Pacific Carlsbad Partners' Application for Writ of Attachment. A true and correct copy of that Stipulation is attached hereto as Exhibit 3.

11. Four days later, on July 7, 2003, Lopez thumbed his nose at both Protective Orders described above when – without notice to the California Superior Court, or any of his creditors – he sold the Carlsbad Property for approximately $700,000 (approximately $50,000 below fair market value) in a shortened escrow, and fled to Florida. A true and correct copy of the San Diego County Recorder's Office transaction record of this sale is attached hereto as Exhibit 4.

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12. A scant eight days later, on July 15, 2003, Lopez had consummated the purchase of the Florida Property for approximately $745,000 (presumably with the purloined proceeds from the Carlsbad Property sale). That left Lopez living comfortably in Florida several weeks before the scheduled attachment hearing on August 8, 2003.

13. Now the past is proving to be prologue to the future as the risk of history repeating itself looms largely as a threat to the efficacy of the bankruptcy process. Lopez has again secretly arranged for the sale of his residence – the only significant asset available to satisfy the claims of the creditors in this proceeding. And he would have gotten away with it ***again***, but for the occurrence of one serendipitous event: on or about March 27, 2006, a process server, sent to personally serve Lopez with a Deposition Subpoena, discovered a For Sale sign on the Florida Property, and noted that it was vacant. This triggered Stanly's immediate investigation which revealed the even more alarming details of the impending escrow.

14. If the sale is allowed to proceed without the supervision of a trustee, Lopez's bankruptcy estate may well be emptied of assets, and Lopez's creditors will be left empty-handed ***again***.

15. In order to preserve the assets of the estate, and assure a ratable distribution of available assets, an interim trustee must be appointed to fairly administer the proceeds of the sale of the Florida Property for the benefit of Lopez's creditors.

16. Stanly is prepared to furnish a bond in an amount approved by this Court pursuant to FRBP 2001(b). In that connection, Stanly submits that the only damages Lopez may incur is the difference between the interest earned on the trustee's deposit account and other interest or investment opportunities available to Lopez. Absent contrary evidence submitted by Lopez, Stanly submits that the difference will be nominal.

II. MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to FRBP 2002(a) and 11 U.S.C. §303(g), an interim trustee may be appointed in an involuntary proceeding at any time before an order for relief is entered, where, as here, a trustee is "necessary to preserve the property of the estate or to prevent loss to the estate." Under exigent circumstances, an interim trustee may be appointed on an ex parte basis – even without notice to

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SAN DIEGO, CALIFORNIA 92101
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the debtor and/or a hearing. *Matter of R. S. Grist Co.*, 16 B.R. 872 (Dist. Ct. S.D.Fla. 1982) (without notice to the debtor or a hearing, the bankruptcy court properly granted an ex parte application to appoint an interim trustee to preserve estate assets).

An interim trustee should be appointed where, as here, a debtor has demonstrated an intent to dissipate an estate's only significant asset. *In re James Plaza Joint Venture*, 62 B.R. 959 (Bkrtcy. S.D.Tex. 1986) (interim trustee appointed where debtors were using the estate's only asset – a fund of approximately $150,000 – to pay attorneys and accountants in connection with State court proceedings). Here, Lopez is attempting to sell the only significant asset that would be available to satisfy the claims of the creditors in this action – the Florida Property. Once that asset is sold, it will not be available to the estate. Those exigent circumstances require the appointment of an interim trustee. *Id.*

Luckily, this is not a situation like the one in 2003, where the horse had already left the barn, and Lopez's creditors did not learn of the sale of his only asset until it was just exactly too late. This time, there is just enough time to act – to put an interim trustee in place to insure that Lopez is finally held to account, and his creditors receive ratable distribution. Stanly respectfully requests that this Court do so by granting this Application.

WHEREFORE, Stanly respectfully requests that this Court:

1. Enter an Order appointing an interim trustee to: (1) conduct the sale of the Florida Property, and (2) preserve and appropriately administer the proceeds from the sale of the Florida Property; and

2. For such other and further relief as the court deems reasonable, just and proper.

Dated: March 30, 2006

ROBBINS & KEEHN
A Professional Corporation

By: //s// L. Scott Keehn

L. Scott Keehn
Attorneys for Petitioning Creditor
ALAN STANLY

ROBBINS & KEEHN, APC
ATTORNEYS AT LAW
2400 UNION BANK BUILDING · 530 "B" STREET
SAN DIEGO, CALIFORNIA 92101
TELEPHONE (619) 232-1700 · TELECOPIER (619) 544-9095

III. DECLARATION OF LESLIE F. KEEHN

I, Leslie F. Keehn, declare:

1. I am an attorney with the law firm of Robbins & Keehn, APC, attorneys of record for Petitioning Creditor, Alan Stanly. I have personal knowledge of the facts stated herein.

2. On March 30, 2006, at approximately 3:45 p.m., I called this Court to notify it of the filing of this *Ex Parte* Application.

3. On March 30, 2006, at approximately 4:00 p.m., I called Lopez's attorney, Jonathan Hayes, to notify him of the filing of this *Ex Parte* Application. Mr. Hayes' office informed me that Mr. Hayes was not in the office, and I was transferred to his voicemail. I left Mr. Hayes a detailed message explaining that this *Ex Parte* Application would be electronically filed with this Court at some point during the evening of March 30, 2006. I further informed Mr. Hayes that the purpose of this *Ex Parte* Application is to obtain an order from this Court appointing an interim trustee to conduct the sale of Lopez's Florida Property. I further informed Mr. Hayes that my office would serve them with a copy of this *Ex Parte* Application via email and facsimile to Mr. Hayes' office.

4. I personally arranged to fax copies of this *Ex Parte* Application to the United States Trustee, the other Petitioning Creditors, and Camille Collins (Lopez's listing agent for the sale of the Florida Property) on March 30, 2006 (immediately after the Application has been filed with this Court).

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct, and that this Declaration was executed on March 30, 2006 at San Diego, California.

//s// Leslie F. Keehn
LESLIE F. KEEHN

ROBBINS & KEEHN, APC
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2400 UNION BANK BUILDING · 530 "B" STREET
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TELEPHONE (619) 232-1700 · TELECOPIER (619) 544-9095

VERIFICATION

I, **ALAN STANLY** , declare:

I am over the age of eighteen (18) and am a Petitioning Creditor in these proceedings. I have read the foregoing "**VERIFIED *EX PARTE* APPLICATION FOR AN ORDER APPOINTING AN INTERIM TRUSTEE**" and know the contents thereof. Based upon my personal knowledge, I know that the factual matters stated in the "Verified Application" are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct, and that this Verification was executed on March 30, 2006 at San Marcos, California.

//s// Alan Stanly
ALAN STANLY

EXHIBIT 1

Search for a Property: Select Your State | To Buy | Search

Do you have a home to sell?
Have your home listing displayed on PostaHouse.com. **List your home now.**

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- Mortgage Calculator

- Links Trade
- Link Partners

View Counter: 46

Contact Information:

House Owner: camille collins
Phone: 850 650 7293
Contact This Owner

Home Information:

Address: 310 Sand Myrtle Trail
City: Destin **State:** Florida **Zip:** 32541

Description: A stunning custom home with all the features a family needs. It has a lovely foyer with an alabaster chandelier, gourmet kitchen, home office, and too many extras to list.A quality home, and the best value in Kelly Plantation, the most prestigious gated community in Destin.

Tell a Friend **Map Direction**

Image Not Available

Image Not Available

closer look | closer look | closer look | closer look

Date Post: 2/22/2006 10:25:56 AM **Price:** $1,295,000.00

Beds: 5 **Baths:** 3.5 **Garage:** 2 **Sq feet:** 4000 - 5000 **Years built:** 1997

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EXHIBIT 2

AT-140

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*:	FOR COURT USE ONLY
Jeffrey Isaacs (Bar No. 042622) Gerald P. Kennedy (Bar No. 105887) Procopio, Cory, Hargreaves & Savitch LLP 530 "B" Steet, Suite 2100 San Diego, California 92101 TELEPHONE NO.: 619-515-3239 FAX NO.: 619-235-0398 ATTORNEY FOR *(Name)*: Plaintiff Union Bank of California, N.A.	FILED Clerk of the Superior Court JUL 0 3 2003 BY: A. LUM
NAME OF COURT: San Diego Superior Court STREET ADDRESS: 325 South Melrose Drive MAILING ADDRESS: CITY AND ZIP CODE: Vista, California 92083 BRANCH NAME: North County Division	
PLAINTIFF: UNION BANK OF CALIFORNIA, N.A., a National banking association DEFENDANT: FRANCIS J. LOPEZ, ALAN STANLY, and DOES I through IV, inclusive	
TEMPORARY PROTECTIVE ORDER	CASE NUMBER: GIN 030827

1. The court has considered the application of plaintiff for
   a. [X] a right to attach order, order for issuance of writ of attachment pursuant to Chapter 4 (beginning with Code Civ. Proc., § 484.010), and a temporary protective order.
   b. [ ] an ex parte right to attach order and order for issuance of writ of attachment under Chapter 5 (beginning with Code Civ. Proc., § 485.010).

FINDINGS

2. THE COURT FINDS
   a. Defendant is a [X] natural person [ ] partnership [ ] unincorporated association [ ] corporation [ ] other *(specify)*:
   b. The amount sought to be secured by the attachment under the application for the right to attach is: $
   c. The claim upon which the application for attachment is based is one upon which an attachment may be issued under Code of Civil Procedure section 483.010.
   d. Plaintiff has established the probable validity of the claim upon which the application for the attachment is based.
   e. The order is not sought for a purpose other than the recovery upon the claim on which the application for the attachment is based.
   f. Great or irreparable injury will result to the plaintiff if this order is not issued, based on the following:
      (1) [X] There is a danger that the property sought to be attached would be
         (a) [X] concealed.
         (b) [ ] substantially impaired in value.
         (c) [X] made unavailable to levy by other than concealment or substantial impairment in value.
      (2) [ ] Defendant has failed to pay the debt underlying the requested attachment and is insolvent as defined in Code of Civil Procedure section 485.010, subdivision (b)(2).
      (3) [ ] A bulk sales notice was recorded and published pursuant to Division 6 (beginning with section 6101) of the Commercial Code with respect to a bulk transfer by the defendant.
      (4) [ ] An escrow has been opened pursuant to the provisions of Business and Professions Code section 24074 with respect to the sale by the defendant of a liquor license. The liquor license number is:
      (5) [X] Other circumstances: Plaintiff is informed defendants' real property located at 5461 Los Robles Drive, Carlsbad, California is currently listed for sale and that any proceeds from the sale may be concealed or otherwise made available to levy by other than concealment pending entry of judgment in the matter absent a temporary protective order.
   g. [X] The requirements of Code of Civil Procedure section 485.220 are satisfied, but a temporary protective order should issue instead of an ex parte right to attach order and order for issuance of writ of attachment.
   h. Plaintiff must file an undertaking in the amount of: $ 10,000 before a temporary protective order shall issue, and plaintiff has filed an undertaking in that amount.
   i. The property subject to the following order is: The real property commonly known as 5461 Los Robles Drive, Carlsbad, California 92008, and the proceeds from the refinancing of the real property distributed to Defendant Francis J. Lopez out of Escrow No. 122817-SRW, at American Title Company, 1440 North Harbor Boulevard, Suite 108, Fullerton, CA 92836, on or about June 20, 2003.

   OTHER THAN THOSE NECESSARY FOR ORDINARY LIVING EXPENSES HEREAFTER INCURRED NM

(Continued on reverse)

SHORT TITLE: Union Bank v. Lopez, et al.	CASE NUMBER: GIN 030827

2. j. ☐ The following property of defendant is inventory or farm products held for sale and may be transferred in the ordinary course of business *(specify)*:

   k. ☐ Other *(specify)*:

ORDER

3. THE COURT ORDERS
   a. Defendant shall not transfer, directly or indirectly, any interest in the property described in item 2i of the findings.
   b. ☐ Defendant shall not dispose of the proceeds of any transfer of inventory or farm products held for sale except under the following restrictions:

   c. ☐ Other *(specify)*:

   d. This order shall expire at the earliest of the following times:
      (1) when plaintiff levies upon specific property described in this order,
      (2) after *(date)*: , or
      (3) 40 days after the issuance of this order.

4. Number of pages attached: ______

The foregoing instrument is a full, true and correct copy of the original on file in this office.
Attest: SEP 1 2 2003
Clerk of the Superior Court of the State of California, in and for the County of San Diego.
By [signature] Deputy
E. GONZALEZ

Date: JUL 0 3 2003

THOMAS P. NUGENT
(TYPE OR PRINT NAME)

[signature]
(SIGNATURE OF JUDGE OR COMMISSIONER)

NOTICE TO DEFENDANT: An undertaking has been filed with the court by plaintiff. You may object to the undertaking.

a. You may issue any number of checks against any of your accounts in a financial institution in this state in any amount for the following purposes:
   (1) Payment of any payroll expense (including fringe benefits and taxes and premiums for workers' compensation and unemployment insurance) falling due in the ordinary course of business prior to the levy of a writ of attachment.
   (2) Payment for goods thereafter delivered to you C.O.D. for use in your trade, business, or profession.
   (3) Payment of taxes if payment is necessary to avoid penalties which will accrue if there is any further delay in payment.
   (4) Payment of reasonable legal fees and reasonable costs and expenses required for your representation in the action.
b. In addition, you may issue any number of checks for any purpose so long as the total amount of such checks does not exceed the greater of the following:
   (1) The amount by which the total amount on deposit exceeds the sum of the amount sought to be secured by the attachment and the amounts permitted to be paid pursuant to this notice.
   (2) One thousand dollars ($1,000).
c. If the property is farm products held for sale or is inventory, the temporary protective order may not prohibit you from transferring the property in the ordinary course of business, but may impose appropriate restrictions on the disposition of the proceeds from such transfer.

[SEAL]

CLERK'S CERTIFICATE

I certify that the foregoing is a correct copy of the original on file in my office.
Date:

Clerk, by ______________________, Deputy

EXHIBIT 3

BARRY E. HAGER (SBN 137973)
M. ANDREW SCHNEIDER (SBN 219441)
TREITLER & HAGER, LLP
3737 Camino del Rio South, Suite 109
San Diego, California 92108
Telephone: 619 283-1111
Facsimile: 619-528-0746

Attorneys for Plaintiff PACIFIC CARLSBAD PARTNERS, LLC

FILED
Clerk of the Superior Court
JUL 03 2003
By: SCOTT SEYLER, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF COUNTY OF SAN DIEGO

PACIFIC CARLSBAD PARTNERS, LLC, a California Limited Liability Company, Plaintiff, vs. PRISM ADVANCED TECHNOLOGIES, INC., a California Corporation, FRANCIS J. LOPEZ, an individual, ALAN STANLY, an individual, and DOES 1 through 10, inclusive, Defendants.	Case No. GIC 813397 **STIPULATION FOR TEMPORARY PROTECTIVE ORDER** Date: July 3, 2003 Time: 8:30 a.m. Dept: 65

IT IS HEREBY STIPULATED by and between Plaintiff PACIFIC CARLSBAD PARTNERS, LLC, through its attorneys of record, and Defendants FRANCIS J. LOPEZ and ALAN STANLY that a temporary protective order shall issue as follows:

1. FRANCIS J. LOPEZ ("LOPEZ") will not transfer, directly or indirectly, any interest in real property owned by LOPEZ, including, but not limited to, the certain real property located at 5461 Los Robles Drive, Carlsbad, California 92008

2. ALAN STANLY ("STANLY") will not transfer, directly or indirectly, any interest in real property owned by STANLY, including, but not limited to, not to further encumber the certain real property located at 1569 Berkshire Court, San Marcos, California 92069

The temporary protective order shall be effective commencing July 3, 2003 and shall remain in effect through and until the Court's hearing on Plaintiff's Application for Writ of Attachment, which is scheduled for August 8, 2003.

The parties hereby waive any requirement that Plaintiff file an undertaking prior to the issuance of the temporary protective order.

IT IS SO STIPULATED:

Dated: 7/2/03

TREITLER & HAGER, LLP

By ____________________
BARRY E. HAGER
Attorney for Plaintiff
PACIFIC CARLSBAD PARTNERS, LLC

Dated: ____________________

By ____________________
FRANCIS J. LOPEZ

Dated: ____________________

By ____________________
ALAN STANLY

The temporary protective order shall be effective commencing July 3, 2003 and shall remain in effect through and until the Court's hearing on Plaintiff's Application for Writ of Attachment, which is scheduled for August 6, 2003.

The parties hereby waive any requirement that Plaintiff file an undertaking prior to the issuance of the temporary protective order.

IT IS SO STIPULATED:

Dated: ________________

TREITLER & HAGER, LLP

By ________________
BARRY E. HAGER
Attorney for Plaintiff
PACIFIC CARLSBAD PARTNERS, LLC

Dated: 7-2-03

By ________________
FRANCIS J. LOPEZ

Dated: ________________

By ________________
ALAN STANLY

The temporary protective order shall be effective commencing July 3, 2003 and shall remain in effect through and until the Court's hearing on Plaintiff's Application for Writ of Attachment, which is scheduled for August 8, 2003.

The parties hereby waive any requirement that Plaintiff file an undertaking prior to the issuance of the temporary protective order.

IT IS SO STIPULATED:

Dated: ____________________ TREITLER & HAGER, LLP

By ____________________
BARRY E. HAGER
Attorney for Plaintiff
PACIFIC CARLSBAD PARTNERS, LLC

Dated: ____________________ By ____________________
FRANCIS J. LOPEZ

Dated: 7/2/03 By [signature]
ALAN STANLY

7/2/03 AHS pg 2 of 2

EXHIBIT 4

Westlaw.

REAL PROPERTY TRANSACTION RECORD

Filings Collected Through:03-22-2006
County Last Updated:03-30-2006
Frequency of Update:WEEKLY
Current Date:03/30/2006
Source:COUNTY RECORDER
, SAN DIEGO, CALIFORNIA

OWNER INFORMATION

Owner(s):LANG RMD TRUST
Ownership Rights:PERSONAL TRUST
Additional Owner #1:LANG RMD TRUST
Owner Rights:PERSONAL TRUST
Property Address:5461 LOS ROBLES DR
CARLSBAD CA 92008-4423
Mailing Address:5461 LOS ROBLES DR
CARLSBAD CA 92008-4423

PROPERTY INFORMATION

County:SAN DIEGO
Assessor's Parcel Number:210-115-06-00
Property Type:SINGLE FAMILY RESIDENCE - TOWNHOUSE
Land Use:SINGLE FAMILY RESIDENCE
Building Square Feet:1651

TRANSACTION INFORMATION

Transaction Date:07/07/2003
Seller Name:LOPEZ FRANCIS J
Sale Price:$700,000.00
Consideration:SALE PRICE (FULL)
Deed Type:GRANT DEED
Type of Transaction:RESALE
Mortgage Amount:$560,000.00
Mortgage Type:CONVENTIONAL
Mortgage Term:30 YEARS
Mortgage Deed Type:DEED OF TRUST
Mortgage Date:07/16/2003
Mortgage Due Date:08/01/2033
Interest Rate:ADJUSTABLE
Lender Name: COUNTRYWIDE HM LNS INC
Lender Address: CALABASAS, CA 91302-1613
Recording Date:07/18/2003

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Document Number:860383
Title Company:CHICAGO TITLE CO.
Construction Type:RESALE
Purchase Payment:MORTGAGE

TAX ASSESSOR RECORD is available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.

TRANSACTION HISTORY REPORT is available for this property. The report contains details about all available transactions associated with this property. The report may include information about sales, ownership transfers, refinances, construction loans, 2nd mortgages, or equity loans based on recorded deeds. Additional charges may apply.

Call Westlaw CourtExpress at 1-877-DOC-RETR (1-877-362-7387)
to order copies of documents related to this or other matters.
Additional charges apply.

END OF DOCUMENT

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DOCKET NUMBER 48

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
Minute Order

Hearing Information:

Debtor:	FRANCIS J. LOPEZ
Case Number:	05-05926-PB7 **Chapter:** 7
Date / Time / Room:	MONDAY, APRIL 03, 2006 11:00 AM DEPARTMENT 4
Bankruptcy Judge:	PETER W. BOWIE
Courtroom Clerk:	MARILYN WILKINSON
Reporter / ECR:	LYNETTE ALVES

Matters:

1) ALLEGED DEBTOR'S MOTION FOR PROTECTIVE ORDER & TO QUASH SUBPOENA

2) ALLEGED DEBTOR'S MOTION TO DISMISS CASE

3) STATUS CONFERENCE ON INVOLUNTARY PETITION AND ANSWER (fr. 3/20/06)

Appearances:

M. Jonathan Hayes, ATTORNEY FOR Francis J. Lopez
L. Scott Keehn, ATTORNEY FOR ALAN STANLY
Alleged Debtor present

Disposition:

1) Granted as stated on the record.
2) Denied.
3) Continued to 5/1/06 at 3:00 p.m. No Chapter 7 trustee to be appointed at this time. Order Prohibiting Sale to be signed off by Keehn.
Orders to come from Hayes. Contested re: 1&2.

DOCKET NUMBER 49

L. Scott Keehn (61691)
ROBBINS & KEEHN, APC
A Professional Corporation
530 "B" Street, Suite 2400
San Diego, California 92101
Telephone: (619) 232-1700

Attorneys for **Petitioning Creditors**

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

In Re: FRANCIS J. LOPEZ Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **STIPULATION FOR ENTRY OF CONSENT ORDER ENJOINING SALE OR TRANSFER OF DEBTOR'S REAL PROPERTY** [No Hearing Required]

This "Stipulation for Entry of Consent Order Enjoining Sale or Transfer of Debtor's Real Property" (this "Stipulation") is made by and between the alleged Debtor — Francis J. Lopez — on the one hand, and the petitioning creditors on the other, with reference to the following facts:

First: The Debtor and his spouse as sellers have entered into a contract and escrow for the sale of certain residential real property located at 310 Sand Myrtle Trail, Destin, Florida, 32541 (the "Real Property"), and that prospective sale (the "Sale") is pending in an escrow maintained at First American Title, identified as their Commitment No.1054-1126315 (the "Escrow");

Second: The alleged Debtor's right, title, and interest in the Real Property is or may be property of the estate in the above referenced Bankruptcy case. This Stipulation does not waive

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any rights of the alleged Debtor to assert any exemption available to him with respect to the Real Property;

Third: Both the alleged Debtor on the one hand, and the petitioning creditors on the other, desire and intend to obviate the immediate need for the appointment of an interim Trustee by providing for the immediate entry of a consensual order that prevents the consummation of the Sale, and to prevent the Escrow from closing absent the entry of a further order from the above entitled court which expressly authorizes the Sale and imposes such conditions as are or reasonably may be necessary to preserve the net proceeds as property of the estate;

NOW THEREFORE, the parties stipulate as follows:

1. The parties hereby stipulate, that a "Consent Order Enjoining Sale of Real Property Located at 310 Sand Myrtle Trail, Destin, Florida, 32541" in substantially the form and substance as set forth in Exhibit "A," attached hereto and incorporated herein by this reference (the "Consent Order"), may be entered forthwith.

2. By execution of this Stipulation, the parties respectfully request that the Court enter the Consent Order forthwith.

SO STIPULATED.

Dated: April 6, 2006

ROBBINS & KEEHN
A Professional Corporation

By: //s// L. Scott Keehn
L. Scott Keehn, Attorney for
Petitioning Creditors

Dated: April 6, 2006

LAW OFFICES OF
M. JONATHAN HAYES

By: /s// Jonathan Hayes
M. Jonathan Hayes, Attorney for
Francis J. Lopez, Alleged Debtor

EXHIBIT A

CSD 1001A [11/15/04]
Name, Address, Telephone No. & I.D. No.

L. Scott Keehn (61691)
ROBBINS & KEEHN, APC
A Professional Corporation
530 "B" Street, Suite 2400
San Diego, California 92101
Telephone: (619) 232-1700

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

In Re

FRANCIS J. LOPEZ

Alleged Debtor.

BANKRUPTCY NO. 05-05926-PBINV

Date of Hearing: N/A
Time of Hearing: N/A
Name of Judge: N/A

CONSENT ORDER ENJOINING SALE OR TRANSFER OF REAL PROPERTY LOCATED AT 310 SAND MYRTLE TRAIL, DESTIN, FLORIDA, 32541

IT IS ORDERED THAT the relief sought as set forth on the continuation pages attached and numbered two (2) through _____ with exhibits, if any, for a total of _____ pages, is granted. Motion/Application Docket Entry No. ________

//

//

//

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//

//

DATED:

____
Judge, United States Bankruptcy Court

Signature by the attorney constitutes a certification under Fed. R. of Bankr. P. 9011 that the relief in the order is the relief granted by the court.

Submitted jointly by:

Robbins & Keehn, APC
(Firm name)

By: //s// L. Scott Keehn
Attorneys for ☒ Movant ☐ Respondent

Law Offices of M. Jonathan Hayes
(Firm name)

By: //s// M. Jonathan Hayes

The Court, having reviewed the "Stipulation for Entry of Consent Order Enjoining Sale or Transfer of Debtor's Real Property" filed concurrently herewith, and good cause therefore appearing;

IT IS HEREBY ORDERED, that:

1. Until further order of this court, Francis J. Lopez, the alleged Debtor herein, together with all of his agents, employees, escrow agents, attorneys, and all persons acting pursuant to his request, or direction, or acting in concert with him, are restrained, enjoined, and prohibited from causing, permitting, or suffering the sale or transfer of any interest of Francis J. Lopez in or to that certain residential real property commonly known as 310 Sand Myrtle Trail, Destin, Florida, 32541, and more fully described in Exhibit "1" attached hereto and incorporated herein by this reference (the "Property").

2. Without limiting the generality of the foregoing, and until further order of this court, Francis J. Lopez, the alleged Debtor herein, together with all of his agents, employees, escrow agents, attorneys, and all persons acting pursuant to his request, or direction, or acting in concert with him, are restrained, enjoined, and prohibited from causing, permitting, or suffering that certain escrow mentioned at First American Title identified as Commitment No.1054-1126315 to close.

3. Francis J. Lopez shall cause a true copy of this order to be delivered to his escrow agent at First American Title with respect to Commitment No.1054-1126315, not later than April 7, 2006, by e-mail or fax.

4. A certified copy of this Order may be recorded or filed in the official Real Property Records of the county (or counties) in which the Property is located.

EXHIBIT "1"

L. SCOTT KEEHN - Legal Description

From: "M. Jonathan Hayes" <jhayes@polarisnet.net>
To: "L. SCOTT KEEHN" <LSK@robbins-keehn.com>
Date: 4/6/2006 11:15:47 AM
Subject: Legal Description

The legal description is as follows:

Lot 5, Block I, KELLY PLANTATION PHASE II, according to the Plat thereof as recorded in

Plat Book 15, Page(s) 59 & 60, of the Public Records of Okaloosa County, Florida.

I have asked the title company to send me the name of the escrow.

Jon

DOCKET NUMBER 50

CSD 1001A [11/15/04]

Name, Address, Telephone No. & I.D. No.
L. Scott Keehn (61691)
ROBBINS & KEEHN, APC
A Professional Corporation
530 "B" Street, Suite 2400
San Diego, California 92101
Telephone: (619) 232-1700

Order Entered on
April 06, 2006
by Clerk U.S. Bankruptcy Court
Southern District of California

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

In Re

FRANCIS J. LOPEZ

Alleged Debtor.

BANKRUPTCY NO. 05-05926-PBINV

Date of Hearing: N/A
Time of Hearing: N/A
Name of Judge: N/A

CONSENT ORDER ENJOINING SALE OR TRANSFER OF REAL PROPERTY LOCATED AT 310 SAND MYRTLE TRAIL, DESTIN, FLORIDA, 32541

IT IS ORDERED THAT the relief sought as set forth on the continuation pages attached and numbered two (2) through 2 with exhibits, if any, for a total of 4 pages, is granted. Motion/Application Docket Entry No. 49

//

//

//

//

//

//

DATED: April 06, 2006

Judge, United States Bankruptcy Court

Signature by the attorney constitutes a certification under Fed. R. of Bankr. P. 9011 that the relief in the order is the relief granted by the court.

Submitted jointly by:

Robbins & Keehn, APC
(Firm name)

By: //s// L. Scott Keehn
Attorneys for ☒ Movant ☐ Respondent

Law Offices of M. Jonathan Hayes
(Firm name)

By: //s// M. Jonathan Hayes

CONSENT ORDER ENJOINING SALE OR TRANSFER OF REAL PROPERTY LOCATED AT 310 SAND MYRTLE TRAIL, DESTIN, FLORIDA, 32541

Debtor: Francis Lopez BANKRUPTCY NO. 05-05926-PBINV

The Court, having reviewed the "Stipulation for Entry of Consent Order Enjoining Sale or Transfer of Debtor's Real Property" filed concurrently herewith, and good cause therefore appearing;

IT IS HEREBY ORDERED, that:

1. Until further order of this court, Francis J. Lopez, the alleged Debtor herein, together with all of his agents, employees, escrow agents, attorneys, and all persons acting pursuant to his request, or direction, or acting in concert with him, are restrained, enjoined, and prohibited from causing, permitting, or suffering the sale or transfer of any interest of Francis J. Lopez in or to that certain residential real property commonly known as 310 Sand Myrtle Trail, Destin, Florida, 32541, and more fully described in Exhibit "1" attached hereto and incorporated herein by this reference (the "Property").

2. Without limiting the generality of the foregoing, and until further order of this court, Francis J. Lopez, the alleged Debtor herein, together with all of his agents, employees, escrow agents, attorneys, and all persons acting pursuant to his request, or direction, or acting in concert with him, are restrained, enjoined, and prohibited from causing, permitting, or suffering that certain escrow mentioned at First American Title identified as Commitment No.1054-1126315 to close.

3. Francis J. Lopez shall cause a true copy of this order to be delivered to his escrow agent at First American Title with respect to Commitment No.1054-1126315, not later than April 7, 2006, by e-mail or fax.

4. A certified copy of this Order may be recorded or filed in the official Real Property Records of the county (or counties) in which the Property is located.

Signed by Judge Peter W. Bowie April 06,2006

DOCKET NUMBER 52

CSD 1001A [11/15/04]
Name, Address, Telephone No. & I.D. No.

L. Scott Keehn (61691)
ROBBINS & KEEHN, APC
A Professional Corporation
530 "B" Street, Suite 2400
San Diego, California 92101
Telephone: (619) 232-1700

Order Entered on April 07, 2006 by Clerk U.S. Bankruptcy Court Southern District of California

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

In Re

FRANCIS J. LOPEZ

Alleged Debtor.

BANKRUPTCY NO. 05-05926-PBINV

Date of Hearing: N/A
Time of Hearing: N/A
Name of Judge: N/A

CONSENT ORDER ENJOINING SALE OR TRANSFER OF REAL PROPERTY LOCATED AT 310 SAND MYRTLE TRAIL, DESTIN, FLORIDA, 32541

AMENDED*

IT IS ORDERED THAT the relief sought as set forth on the continuation pages attached and numbered two (2) through 2 with exhibits, if any, for a total of 4 pages, is granted. Motion/Application Docket Entry No. 49

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DATED: April 07, 2006

Judge, United States Bankruptcy Court

Signature by the attorney constitutes a certification under Fed. R. of Bankr. P. 9011 that the relief in the order is the relief granted by the court.

Submitted jointly by:

Robbins & Keehn, APC
(Firm name)

By: //s// L. Scott Keehn
Attorneys for [X] Movant [ ] Respondent

Law Offices of M. Jonathan Hayes
(Firm name)

By: //s// M. Jonathan Hayes

CONSENT ORDER ENJOINING SALE OR TRANSFER OF REAL PROPERTY LOCATED AT 310 SAND MYRTLE TRAIL, DESTIN, FLORIDA, 32541 - AMENDED*

Debtor: Francis Lopez BANKRUPTCY NO. 05-05926-PBINV

The Court, having reviewed the "Stipulation for Entry of Consent Order Enjoining Sale or Transfer of Debtor's Real Property" filed concurrently herewith, and good cause therefore appearing;

IT IS HEREBY ORDERED, that:

1. Until further order of this court, Francis J. Lopez, the alleged Debtor herein, together with all of his agents, employees, escrow agents, attorneys, and all persons acting pursuant to his request, or direction, or acting in concert with him, are restrained, enjoined, and prohibited from causing, permitting, or suffering the sale or transfer of any interest of Francis J. Lopez in or to that certain residential real property commonly known as 310 Sand Myrtle Trail, Destin, Florida, 32541, and more fully described in Exhibit "1" attached hereto and incorporated herein by this reference (the "Property").

2. Without limiting the generality of the foregoing, and until further order of this court, Francis J. Lopez, the alleged Debtor herein, together with all of his agents, employees, escrow agents, attorneys, and all persons acting pursuant to his request, or direction, or acting in concert with him, are restrained, enjoined, and prohibited from causing, permitting, or suffering that certain escrow mentioned at First American Title identified as Commitment No.1054-1126315 to close.

3. Francis J. Lopez shall cause a true copy of this order to be delivered to his escrow agent at First American Title with respect to Commitment No.1054-1126315, not later than April 7, 2006, by e-mail or fax.

4. A certified copy of this Order may be recorded or filed in the official Real Property Records of the county (or counties) in which the Property is located.

*Amended to include Exhibit "1"

Signed by Judge James W. Meyers April 07,2006

EXHIBIT "1"

Signed by Judge James W. Meyers April 07,2006

L. SCOTT KEEHN - Legal Description

From: "M. Jonathan Hayes" <jhayes@polarisnet.net>
To: "L. SCOTT KEEHN" <LSK@robbins-keehn.com>
Date: 4/6/2006 11:15:47 AM
Subject: Legal Description

The legal description is as follows:

Lot 5, Block I, KELLY PLANTATION PHASE II, according to the Plat thereof as recorded in

Plat Book 15, Page(s) 59 & 60, of the Public Records of Okaloosa County, Florida.

I have asked the title company to send me the name of the escrow.

Jon

DOCKET NUMBER 55

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

Minute Order

Hearing Information:

Debtor:	FRANCIS J. LOPEZ		
Case Number:	05-05926-PB7	**Chapter:** 7	INVOLUNTARY
Date / Time / Room:	THURSDAY, MAY 04, 2006 10:00 AM	DEPARTMENT 4	
Bankruptcy Judge:	PETER W. BOWIE		
Courtroom Clerk:	JILLMARIE MCGREW		
Reporter / ECR:	DIANE BERGER		

Matter:

STATUS CONFERENCE ON INVOLUNTARY PETITION AND ANSWER
(fr. 5/1/06)

Appearances:

M. Jonathan Hayes, ATTORNEY FOR Francis J. Lopez
L. Scott Keehn, ATTORNEY FOR ALAN STANLY

Disposition:

Continued to 6/26/06 at 2:00 p.m. Motion and Cross-Motion for Summary Judgment may be noticed for same date & time.

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Leslie F. Keehn, SBN 199153
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Attorneys for **Appellee**

UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In Re: **FRANCIS J. LOPEZ,** Debtor. --- **FRANCIS J. LOPEZ,** Appellant, v. **ALAN STANLY,** Appellee.	Case No. 05-05926-PB7 APPEAL NO. 2 **APPELLEE'S SUPPLEMENTAL RECORD ON APPEAL** **[VOLUME 4 OF 9]** Judge: The Honorable Peter W. Bowie Ctrm: 4

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DOCKET NUMBER 56

CSD 1183 [10/17/05]
Name, Address, Telephone No. & I.D. No.

L. Scott Keehn (SBN 61691)
ROBBINS & KEEHN APC
530 B Street, Suite 2400
San Diego, CA 92101
Telephone: (619) 232-1700

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

In Re
FRANCIS J. LOPEZ, Alleged Debtor

BANKRUPTCY NO. 05-05926-PBINV

Tax I.D.(EIN)#:_____________/S.S.#:XXX-XX-_____ Debtor.

NOTICE OF HEARING AND MOTION

TO: ALLEGED DEBTOR FRANCIS LOPEZ, AND HIS ATTORNEY OF RECORD

YOU ARE HEREBY NOTIFIED that on June 26, 2006, at 2:00 p.m., in Department No. 4, Room _______ the Jacob Weinberger United States Courthouse, located at 325 West "F" Street, San Diego, California 92101-6991, there will be a hearing regarding the motion of PETITIONING CREDITORS, for MOTION FOR SUMMARY JUDGMENT ON PHAST 1 OF BIFURCATED INVOLUNTARY PETITION, OR ALTERNATIVELY, SUMMARY ADJUDICATION OF FACTS NOT SUBJECT TO MATERIAL DISPUTE

Any opposition or other response to this motion must be served upon the undersigned and the original and one copy of such papers with proof of service must be filed with the Clerk of the U.S. Bankruptcy Court at 325 West "F" Street, San Diego, California 92101-6991, NOT LATER THAN FOURTEEN (14)[1] DAYS FROM THE DATE OF SERVICE.

DATED: MAY 29, 2006

/s/ L. Scott Keehn
[Attorney for] Moving Party

[1]If you were served electronically or by mail, you have three (3) additional days to take the above-stated actions.

CSD 1183 (Page 2) [10/17/05]

CERTIFICATE OF SERVICE

I, the undersigned whose address appears below, certify:

That I am, and at all times hereinafter mentioned was, more than 18 years of age;

That on 29th day of May ______________________, I served a true copy of the within NOTICE OF MOTION AND HEARING by [describe here mode of service]

with the Memorandum of Points & Authorities, Separate Statement of Undisputed Facts, Alan Stanly Declaration, Leslie Keehn Declaration, and L. Scott Keehn Declaration via email

on the following persons [set forth name and address of each person served] and/or as checked below:

[✓] Attorney for Debtor (if required):

M. Jonathan Hayes, Esq.
Law Office of M. Jonathan Hayes
21800 Oxnard Street, Suite 840
Woodland Hills, California 91367
Email: jhayes@polarisnet.net

[ ] For Chpt. 7, 11, & 12 cases:

UNITED STATES TRUSTEE
Department of Justice
402 West Broadway, Suite 600
San Diego, CA 92101

[ ] For ODD numbered Chapter 13 cases:

THOMAS H. BILLINGSLEA, JR., TRUSTEE
530 "B" Street, Suite. 1500
San Diego, CA 92101

[ ] For EVEN numbered Chapter 13 cases:

DAVID L. SKELTON, TRUSTEE
525 "B" Street, Suite 1430
San Diego, CA 92101-4507

I certify under penalty of perjury that the foregoing is true and correct.

Executed on May 29, 2006
(Date)

/s/ Lisa L. Keehn
(Typed Name and Signature)

530 B Street, Suite 2400
(Address)

San Diego, CA 92101
(City, State, ZIP Code)

DOCKET NUMBER 56-1

L. Scott Keehn (SBN 61691)
Leslie F. Keehn (SBN 199153)
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Attorneys for **Petitioning Creditors**

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONING CREDITORS' MOTION FOR SUMMARY JUDGMENT (BIFURCATED PHASE - 1)** Date: June 26, 2006 Time: 2:00 p.m. Judge: The Honorable Peter W. Bowie Ctrm: 4

Petitioning creditors respectfully submit the following memorandum of points and authorities in support of their motion for summary judgment against the alleged debtor Francis J. Lopez ("Lopez").

/ / /

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I. INTRODUCTION

Lopez has asserted that the size of his creditor body is sufficient to require three rather than one petitioning creditor. He supports this assertion by the attachment of "Exhibit A" to his response[1] wherein he identifies 22 entities as alleged creditors holding claims against him on June 30, 2005. But not all entities holding claims against a debtor are included in the count of the "*fewer than 12*" component of Section 303(b)(2) which entitles a single creditor, acting alone, to initiate an involuntary bankruptcy proceeding.

What must be done to determine whether or not this involuntary petition is sufficient by the filing of a single creditor turns on a detailed analysis of which creditors count, and which creditors do not, for purposes of determining whether there are in fact "*fewer than 12*" entities to be included.

This analysis begins with the universe of 22 entities which Lopez asserts must be included in the count. If the entities named did in fact hold a claim against the Lopez as of the petition date, then a two-part evaluation must follow. First, it must be established that the claim is sufficiently well established to meet the threshold standards invoked by Section 303(b)(1).[2] As to claims that do not meet that standard, then the inquiry ends, and they are excluded from the count.

If a claim does meet that threshold standard, then the analysis turns to the exclusionary provisions of Section 303(b)(2).[3] If a claim does fall within one of the excluded categories, the inquiry ends and that claimant is not included in the controlling count.

When that analysis has been fully performed here, it reveals that there are in fact no holders of claims against Lopez that both meet the standards of Section 303(b)(1) and fall outside the category of excluded claims in (b)(2) ["the Section 303(b) Count"]. Since zero is a number less than twelve, it follows that a single Petitioning Creditor – Alan Stanly – was sufficient to initiate the process of this involuntary petition.

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[1] Which is also duplicated as Deposition Exhibit 17, the "Creditor List" or sometimes "List of Creditors."

[2] Claims must be noncontingent as to liability and not subject to a bona fide dispute.

[3] Excludes employees and insiders of the debtor, as well as recipients of voidable transfers.

II. ISSUES PRESENTED

1. Non-Creditors Excluded. To be included in the Section 303(b) Count, an entity must be the holder of a claim against the debtor as of the Petition Date.[4] The following Listed Creditors did not hold a claim against Lopez on June 30, 2005:

(a) Allstate Floridian;
(b) American Express;
(c) American Home Shield;
(d) Coastal Community Insurance;
(e) Northwest Florida Daily News;
(f) Progressive Insurance; and
(g) Valley Forge Life Insurance (collectively referred to as the "Non-Creditor Entities").[5]

Can any of the Non-Creditor Entities be included in the Section 303(b) Count?

2. Insiders Excluded. An entity can not be included in the Section 303(b) Count if it is an "insider" of the debtor.[6] Alan Stanly ("Stanly") and Frederick Lopez ("Frederick") are insiders of Lopez.[7] Can either Stanly or Frederick be included in the Section 303(b) Count?

3. Disputed Claims Excluded. Entities will be excluded from the Section 303(b) Count if they hold claims against the debtor that are the subject of a bona fide dispute.[8] Lopez has a bona fide dispute pertaining to the liability for, or amount of, the following creditors' claims:

(a) Bankcard Services;
(b) Ft. Walton Beach Medical Center; and
(c) Verizon Wireless (collectively referred to as the "Disputed Claimants").[9]

Can any of the Non-Creditor Entities be included in the Section 303(b) Count?

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[4] 11 U.S.C. §303(b)(1) & (2); *In re Smith*, 243 B.R. 169, 185-186 (Bkrtcy. N.D.Ga. 1999).

[5] See, Part IV. B. below.

[6] 11 U.S.C. §303(b)(2); *In re Crain*, 194 B.R. 663, 666 (Bkrtcy.S.D.Ala. 1996).

[7] See, Part IV. C. below.

[8] 11 U.S.C. §303(b)(1) & (2); *In re Braten*, 99 B.R. 579, 581 (Bkrtcy. S.D.N.Y. 1989); *In re Elsub Corp.*, 70 B.R. 797, 799 (Bkrtcy. D.N.J. 1987).

[9] See, Part IV. D. below.

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4. Post-Petition Transferee's Excluded. Entities that have received a post-petition transfer on account of a pre-petition debt which is voidable under Section 549 can not be included in the Section 303(b) Count.[10] The following entities on the Creditor List have received post-petition transfers that are voidable under Section 549:

(a) Bank of America;
(b) Cingular Wireless;
(c) Cox Communications;
(d) Kelly Plantation Owners Association;
(e) Okaloosa Gas District;
(f) Quicken Platinum Card;
(g) Texaco/Shell;
(h) Union Bank of California; and
(I) Verizon Wireless (collectively referred to as the "549 Entities").[11]

Can any of the 549 Entities be included in the Section 303(b) Count?

5. Preference Transferees Excluded. Entities that have received pre-petition transfers that are voidable as preferences under Section 547 can not be included in the Section 303(b) Count.[12] The following entities on the Creditor List have received avoidable preferences:

(a) Bank of America;
(b) Bankcard Services;
(c) Cingular Wireless;
(d) Citi Cards;
(e) Household Bank/HSBC;
(f) Northwest Florida Daily News;
(g) Okaloosa Gas District;
(h) Quicken Platinum Card;
(I) Texaco/Shell
(j) Union Bank of California; and
(k) Wayne Wise (collectively referred to as the "547 Entities").[13]

Can any of the 547 Entities be included in the Section 303(b) count?

III. SUMMARY OF UNDISPUTED FACTS

For the reasons set forth in the Statement of Undisputed Facts ["UF"] 3 through 163, it

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[10] 11 U.S.C. §303(b)(2); *In re Crain*, supra, 194 B.R. at 666.

[11] See, Part IV. E. below.

[12] 11 U.S.C. §303(b)(2); *In re Crain*, supra,194 B.R. at 666; *In re Hoover*, 32 B.R. 842, 848 (Bkrtcy. Okl. 1983) ("The recipient of a transfer pursuant to 11 U.S.C. § 547 is expressly excluded from the creditor count as per 11 U.S.C. § 303(b)(2)").

[13] See, Part IV. F. below.

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becomes apparent that none of the creditors identified on the creditor list can be included in the Creditor List for the reasons summarized below:

A. Allstate Floridian. This entity did not hold a claim against the debtor on June 30, 2005. [UF 35-40]

B. American Express. This entity held no claim against Lopez on June 30, 2005. [UF 41-43]

C. American Home Shield. This entity did not hold a claim against Lopez on June 30, 2005. [UF 44-46]

D. Bank of America.

(1) Bank of America received pre-petition preference payments from Lopez. [UF 47-54]

(2) Bank of America received post-petition payments on account of its pre-petition claim. [UF 55-56]

E. Bankcard Services.

(1) This entity's claim was subject to a bona fide dispute over the unilateral imposition of late charges which occur in light of an automatic transfer provision. [UF 60]

(2) This creditor received voidable preference payments between April 1 and June 30, 2005. [UF 57-59]

F. Cingular Wireless.

(1) This entity received pre-petition preference payments on June 19, 2005. [UF 61-63]

(2) Cingular received payments that fully satisfied any pre-petition obligation before January 10, 2006. [UF 64]

G. Citicards. This creditor received pre-petition preference payments on April 18, 19, May 18, 19 and June 20. [UF 65-72]

H. Coastal Community Insurance. This entity held no claim against Lopez on June 30, 2005 [UF 73-78]

I. Cox Communications. This entity received post-petition payments that fully

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satisfied its pre-petition obligation at some point after June 30, 2005, but before April 27, 2006. [UF 79-81]

J. **Ft. Walton Beach Medical Center.** This claim is subject to a bona fide dispute as to liability based upon factual misrepresentations made to Lopez in the process of his admission. [UF 82-84]

K. **Household Bank.** This creditor received pre-petition payments on its antecedent obligations between April 1, 2005, and June 30, 2005, including, but necessarily limited to, payments made on May 16 and 17, 2005. [UF 85-90]

L. **Kelly Plantation Owners Association.** At some time after June 30, 2005, but before December 12, 2005, the pre-petition obligation owed to this entity had been paid in full. [UF 91-95]

M. **Northwest Florida Daily News.**

(1) This creditor did not hold a claim against Lopez on June 30, 2005, because on May 17, 2005, his subscription had been pre-paid for a 3-month period. [UF 98]

(2) This entity also received pre-petition payments on its antecedent debt which are avoidable preferences. [UF 96, 97, 99 & 100]

N. **Okaloosa Gas District.**

(1) This entity received payments that are voidable as preferences including, but not necessarily limited to, those made on May 3, May 19 and June 19, 2005. [UF 101-104]

(2) This entity also received post-petition payments that fully satisfied its pre-petition claim. [UF 105-111]

O. **Progressive Insurance.** This entity did not hold a claim against Lopez on June 30, 2005, because the premiums due for the policy in force had been previously paid. [UF 112-115]

P. **Citibank/Quicken Platinum Card.**

(1) This entity received voidable preference payments on, but not necessarily only on, May 2 and June 27, 2005. [UF 116-118]

(2) This entity also received post-petition payments on account of its pre-petition obligations. [UF 119-120]

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Q. Alan Stanly. He is an insider because both he and Lopez own 50% of Prism Technologies. [UF 121 & 122]

R. Texaco/Shell.

(1) This entity received voidable preference payments on, but not necessarily only on, April 4 and May 10, 2005. [UF 123-126]

(2) This entity received post-petition payments on account of its pre-petition obligation on, but not necessarily only on, August 9, September 26 and October 25, 2005. [UF 126-131]

S. Union Bank.

(1) This entity received payments on account of its antecedent debt on, but not necessarily only on, April 13 and May 18, 2005. [UF 148-152]

(2) This entity received payments on its pre-petition obligation on July 8, August 8, September 8, October 6, October 31, November 7 & December 12, 2005, and January 11, 2006. [UF 148-163]

T. Valley Forge Life Insurance. This entity did not hold a claim against Lopez on June 30, 2005, because Lopez is not the account debtor on this obligation — his wife Madeleine is. [UF 132-137]

U. Verizon Wireless.

(1) This obligation was subject to a bona fide dispute as to the amount of the obligation. Verizon claimed $262.47 due and Lopez disputed all amounts in excess of $35. [UF 139-141].

(2) On August 3, 2005, Verizon received a payment in full of its obligation due as of June 30, 2005. [UF 141]

V. Wayne Wise. On May 17, 2005, this entity received a $900 payment on account of its antecedent debt. That payment was not in accordance with the customary terms established between the debtor and that claimant [UF 142-146]

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IV. SUMMARY JUDGMENT IS PROPER BECAUSE THE UNDISPUTED FACTS ESTABLISH THAT LOPEZ HAS LESS THAN 12 QUALIFYING CREDITORS

A. Standard of Review

1. *Summary Judgment is Appropriate Where No Dispute as to Material Facts Exists*

The United States Supreme Court encourages the use of summary judgment motions to streamline litigation by efficiently disposing of unsupported claims.[14] The standard set forth in Rule 56 of the Federal Rules of Civil Procedure ("FRCP"), made applicable hereto by Rules 7056 and 9014 of the Federal Rules of Bankruptcy Procedure, governs this summary judgment motion:

> [T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. *The moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.*[15]

Pursuant to this standard:

> Where the operative facts are substantially undisputed, and the heart of the controversy is the legal effect of such facts, such a dispute effectively becomes a question of law that can, quite properly, be decided on summary judgment.[16]

Operative or "[m]aterial facts are those that may affect the outcome of the case."[17]

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[14] *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986); *In re Brooklyn Navy Yard Asbestos Litigation*, 971 F.2d 831, 840 (2nd Cir. 1992) ("While the corresponding desirability of streamlining litigation cannot justify dismissing valid claims, it does suggest the particular appropriateness of taking advantage of the summary judgment mechanism to dispose of claims that, although adequately pleaded, must fail as a matter of law").

[15] *Celotex Corp. v. Catrett,* supra, 477 U.S. at 322-323 (emphasis added).

[16] *F.T.C. v. Gill*, 71 F.Supp.2d 1030, 1035 (C.D.Cal. 1999); *In re Mercer*, 169 B.R. 694, 696 (Bkrtcy. W.D.Wash. 1994).

[17] *F.T.C. v. Gill*, supra, 71 F.Supp.2d at 1034.

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2. *Summary Judgment Is Appropriate Where the Non-Moving Party Has Offered No Evidence in Support of its Defenses*

Petitioning Creditors, as the moving parties, bear the initial burden of demonstrating that there is no genuine issue of material fact, and they are therefore entitled to judgment as a matter of law.[18] "[T]he burden on the moving party may be discharged by 'showing' – that is, pointing out to the district court – that there is an absence of evidence to support the nonmoving party's case."[19]

Once the movant has met this burden, the burden shifts to the nonmoving party to submit admissible evidence to support its claim.[20] Thus, the nonmoving party bears the "*ultimate burden*" of demonstrating the existence of a genuine issue of material fact.[21] To avoid summary judgment, the nonmoving party must provide "sufficient evidence for a reasonable jury to return a verdict for the nonmoving party."[22]

Here, Lopez's threshold affirmative defense is that there is an insufficient number of Petitioning Creditors. In support, Lopez's answer alleges the existence of 22 creditors, and contends that Stanly is the sole qualified Petitioning Creditor.

Thus far, Lopez has provided no evidence to support his asserted defense. Rather, the undisputed evidence obtained during discovery establishes that *none* of the 22 listed creditors actually counts for purposes of 11 U.S.C. §303(b)(2). The status of each of the 22 listed creditors is summarized in the following chart, and discussed more fully in Parts III B - F below.

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[18] FRCP 56(c); *British Airways Bd. v. Boeing Co.*, 585 F.2d 946, 951 (9th Cir. 1978).

[19] *Celotex Corp. v. Catrett*, supra, 477 U.S. at 325.

[20] *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1103 (9th Cir. 2000); *In re Agricultural Research and Technology Group, Inc.*, 916 F.2d 528, 533 (9th Cir. 1990).

[21] *In re Chin-Liang Chan*, 325 B.R. 432, 437 (Bkrtcy. N.D.Cal. 2005) ("the nonmoving party must go beyond the pleading and identify facts demonstrating a genuine issue for trial").

[22] *F.T.C. v. Gill*, supra, 71 F.Supp.2d at 1034.

Creditors Listed in Lopez's Answer	Included in §303(b)(2) Count	Excluded Because
ALLSTATE FLORIDIAN (Homeowners Insurance)	NO	Non-Creditor (Post-Petition Debt)
AMERICAN EXPRESS (Credit Card)	NO	Non-Creditor (Disclaims Debt)
AMERICAN HOME SHIELD (Insurance)	NO	Non-Creditor (Post-Petition Debt)
BANK OF AMERICA (Credit Card)	NO	§547 & §549
BANKCARD SERVICES (Credit Card)	NO	Disputed & §547
CINGULAR WIRELESS (Mobile Phone)	NO	§547 or §549
CITI CARDS (Credit Card)	NO	§547
COASTAL COMMUNITY INSURANCE (Property Insurance)	NO	Non-Creditor (Post-Petition Debt)
COX COMMUNICATIONS (Television and Internet)	NO	§549
FT. WALTON BEACH MEDICAL CENTER (Emergency Room/Medical Services)	NO	Disputed
HOUSEHOLD BANK / HSBC (Credit Card)	NO	§547
KELLY PLANTATION OWNERS ASSOCIATION (Homeowners Association)	NO	§549
NORTHWEST FLORIDA DAILY NEWS (Newspaper)	NO	Non-Creditor (Pre-Paid) & §547
OKALOOSA GAS DISTRICT (Utilities)	NO	§547 & §549
PROGRESSIVE INSURANCE (Auto Insurance)	NO	Non-Creditor (Post-Petition Debt)
QUICKEN PLATINUM CARD (Credit Card)	NO	§547 & §549
STANLY, ALAN (Judgment Creditor)	NO	Insider
TEXACO/SHELL (Gasoline Credit card)	NO	§547 & §549

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Creditors Listed in Lopez's Answer	Included in §303(b)(2) Count	Excluded Because
UNION BANK OF CALIFORNIA (Settlement)	NO	§547 & §549
VALLEY FORGE LIFE INSURANCE (Life Insurance)	NO	Non-Creditor
VERIZON WIRELESS (Mobile phone)	NO	Disputed & §549
WISE, WAYNE (Personal Loan)	NO	§547

Given that Lopez cannot prove that there are more than eleven entities that are properly included in the §303(b)(2) count, summary judgment is proper on the question of the adequacy of the number of Petitioning Creditors.

B. Each of the Non-Creditor Entities Must be Excluded From the Section 303(b) Count Because They Were Not Holders of a Claim on June 30, 2005.

The plain language of Section 303(b)(1) & (2) makes it clear that – with exceptions that are inapplicable here – an entity must be the "*holder of a claim*" against the debtor.[23] That is an obvious and fundamental prerequisite for being included within the universe of entities addressed by Section 303(b)(1) & (2). Absent that qualification, the holder of a past claim which has been fully satisfied, or an entity which becomes a holder of a claim in the future, is simply not relevant.

None of the entities identified as the Non-Creditor Entities can qualify as holders of a claim against Lopez on the petition date because none of them was a holder of a claim of any kind against Lopez on June 30, 2005.[24] They can not be included in the Section 303(b) Count.

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[23] 11 U.S.C. §303(b)(1); *In re Smith*, 243 B.R. 169, 185-186 (Bkrtcy. N.D.Ga. 1999).

[24] See, Part III ¶¶ A. [Allstate Floridian]; B. [American Express]; C. [American Home Shield]; H. [Coastal Community Insurance]; M. [Northwest Florida Daily News]; O. [Progressive Insurance]; and T. [Valley Forge Life Insurance].

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C. Stanly and Frederick Lopez are Insiders and Must be Excluded From the Section 303(b) Count

For reasons that are too obvious to require comment, the Bankruptcy Code excludes from the Count of relevant creditors in Section 303(b)(2) those claimants that are insiders with respect to the debtor.[25] Frederick Lopez is the father of Francis Lopez, and an obvious insider.[26]

Stanly may not be an obvious insider, but he fits the statutory definition nonetheless because he is an insider with respect to an affiliate of Lopez. Specifically, Lopez is a 50% owner of Prism Advanced Technologies, a corporation that has a pending involuntary Chapter 7 bankruptcy petition in the Bankruptcy Court of the Southern District of California, Case No. 03-07777-JM.[27] Bankruptcy Code §101(2)(B) defines an "affiliate" as a "corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor. . . ." Stanly is a 50% shareholder, officer and director of that corporation.[28] Bankruptcy Code § 101(31)(E) includes in the definition of an insider, an insider of the debtor's affiliate. Stanly is such an insider.

D. The Disputed Claimants Must be Excluded From the Section 303(b) Count

The statutory language of Section 303(b)(1) expressly excludes from consideration for the Section 303(b) Count, any holder of a claim that is the subject of a bona fide dispute as to either liability or amount.[29] The undisputed facts plainly demonstrate that Lopez had a material dispute as to liability, or in some cases amount, with respect to the claims of Bank Card services,[30] Walton

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25 11 U.S.C. §303(b)(2); *In re Crain*, 194 B.R. 663, 666 (Bkrtcy. S.D.Ala. 1996).

26 11 U.S.C. §101(31)(A)(I); and UF 30-33.

27 See ¶ 1, Declaration of Francis Lopez in Opposition to Motion for Relief from Stay, Southern District Bankruptcy Case No. 03-07777-INV7, Docket Item No.45; UF 121.

28 UF 122.

29 11 U.S.C. §303(b)(1) & (2); *In re Braten*, 99 B.R. 597, 581 (Bkrtcy. S.D.N.Y. 1989); *In re Eslub Corp.*, 70 B.R. 797, 799 (Bkrtcy. D.N.J. 1987).

30 See Part III. E.(1).

Beach Medical Center,[31] and Verizon Wireless.[32] The existence of such disputes automatically excludes these entities from the Section 303(b) Count.

E. The 549 Entities Have All Received Voidable Post-Petition Transfers and Must be Excluded From the Section 303(b) Count.

For purposes of 11 U.S.C. §303(b), creditors who received voidable post-petition transfers under 11 U.S.C. §549 will not be counted as qualifying creditors even where the payments may have been made to satisfy debts incurred in the ordinary course of the debtor's business.[33] These creditors are excluded from the Section 303(b) count because they would be unlikely to join in a petition by reason of their relationship to the alleged debtor and/or because their interests would be disserved by a successful petition.[34]

The court in *Matter of International Teldata Corp.*, supra, explained:

> It is of little consequence that some of the creditors who were excluded under 11 U.S.C. §549 have since extended the Alleged Debtor additional goods and services, for which they now await repayment. The fact that their pre-petition claims were satisfied after the filing of the present petition is determinative. They cannot be counted in ascertaining the total number of creditors of the Alleged Debtor. The instant petition was, therefore, properly filed in this regard.

In the context of an involuntary case, any transfer made in the involuntary gap period, which is only authorized by Section 303(f) and satisfies a pre-petition debt, is subject to avoidance under Section 549.[35] Here, the undisputed facts clearly demonstrate that post-petition transfers have been made to all of the 549 Entities in satisfaction of pre-petition accounts.[36]

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[31] See Part III. J.

[32] See Part III. U.

[33] *Matter of International Teldata Corp.*, 12 B.R. 879, 881-882 (Bkrtcy. Nev. 1981) ("Therefore, those creditors who were repaid by the Alleged Debtor in this fashion cannot be counted in determining the number of petitioning creditors which are necessary under 11 U.S.C §303(b)").

[34] *Matter of Rassi*, 701 F.2d 627, 629 (7th Cir. 1983).

[35] 11 U.S.C. §549(a)(2)(A) [transfers only authorized under Section 303(f), and 549(b)].

[36] See, Part III above.

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Where payments have been made on a debtor's obligations, the source of those payments is presumed to be the debtor's own property.[37] To rebut that presumption, the debtor would have to provide admissible evidence establishing that the payments were gratuitously made with property owned by some other party.[38]

Here, the undisputed facts establish that post-petition transfers were made to each of the 549 Entities on account of pre-petition claims.[39] Since there was no court order authorizing any of these payments,[40] they are all subject to avoidance under §549.

F. The 547 Entities Have All Received Voidable Preferences and Must be Excluded From the Section 303(b) Count.

This Court has articulated the elements of a prima facie case of an avoidable preference under Section 547(b):

> 1. A transfer of debtor's property,
> 2. To or for the benefit of creditor,
> 3. For or on account of an antecedent debt,
> 4. Made while the Debtor was insolvent,
> 5. On or within 90 days of bankruptcy,
> 6. That enables a creditor to receive more than the creditor would have received if the transfer had not been made.[41]

Once the above elements have been established, the burden shifts to the opposing party (here, the debtor) "to affirmatively show that the transfer falls within an exception under §547(c)."[42] For transfers made within 90 days of the filing, the debtor is presumed to have been

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[37] *In re Chase & Sanborn Corp.*, 813 F.2d 1177, 1181 (11th Cir. 1987) ("funds used as payment are presumed to be the debtor's property absent some proof to the contrary offered by those defending the transfer"); *Snyder v. Dravo Corp.*, 6 F.R.D. 546, 553 (W.D.Pa. 1947) (a payment "is presumed" to be made by the person who owes the debt).

[38] *Id.*

[39] See, Part III above at ¶¶ K [Household Bank]; N.(2) [Okaloosa Gas]; P(2) [Quicken Platinum]; R.(2) [Texaco / Shell]; S.(2) [Union Bank] & U.(2) [Verizon].

[40] See, Case Docket.

[41] *In re American Ambulance Service, Inc.*, 46 B.R. 658, 659 (Bkrtcy. S.D.Cal. 1985).

[42] 11 U.S.C. §547(g); *In re American Ambulance Service, Inc.*, supra, 46 B.R. at 660; *In re Western World Funding, Inc.*, 54 B.R. 470, 479 (Bkrtcy. D.Nev. 1985) ("As the Trustee has met his burden of proving the prima facie elements of a preference, the defendants may avoid liability only by proof that their payments fall within one or more of the exceptions enumerated in § 547(c)").

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insolvent, so no evidence need be offered to establish that element.[43] Here again, the Petitioning Creditors are entitled to the presumption that the property transferred in satisfaction of an antecedent debt was the debtor's property.[44] Finally, where creditors are not expected to receive a 100% distribution on account of their claims, it is presumed that the transfers allowed the transferee to receive a greater recovery than if the transfer had not been made.[45]

With these principles in mind, we turn to the undisputed facts. First, we note with disappointment that the foreseeable liquidation value of this estate will be no more than $405,000.[46] Against that amount, there will be foreseeable pre-petition claims of at least $2,590,800.[47] The undisputed facts further reveal that all of the 547 Entities have received transfers of the debtor's property, for their benefit, on account of an antecedent debt, on or after April 1, 2005 (90 days prior to the petition date), and before the petition was filed on June 30, 2005. As a result, none of them can be included in the Section 303(b) Count.[48]

V. CONCLUSION

The undisputed facts demonstrate that there is not a single creditor identified by Lopez that qualifies for inclusion in the Section 303(b) Count. That being the case, Lopez has *fewer than twelve* creditors within the meaning of Section 303(b), and Stanly properly initiated this involuntary process as the sole petitioning creditor.

For these, and all of the foregoing reasons, this Motion should be granted, and the Court should enter its order establishing that Stanly, as a single petitioner, was empowered by Section

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[43] 11 U.S.C. §547(f).

[44] See Part IV. E. above.

[45] See, *In re Lewis W. Shurtleff, Inc.*, 778 F.2d 1416, 1421 (9th Cir. 1985); *In re Chattanooga Wholesale Antiques, Inc.*, 930 F.2d 458, 465 (6th Cir. 1991).

[46] U.F. 19-26.

[47] U.F. 27-34.

[48] See Part III (Summary of Undisputed Facts) above at ¶¶ D.(1) [Bank of America]; E.(2) [Bank Card Services]; F.(1) [Cingular Wireless]; G. [Citi Card]; K. [Household Bank]; M.(2) [Northwest Florida Daily News]; N.(1) [Okaloosa Gas]; P.(1) [Quicken Platinum]; R.(1) [Texaco / Shell]; S.(1) [Union Bank]; and V. [Wayne Wise].

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303(b) to act alone in initiating this Petition; or, in the alternative, enter its order establishing, without the need for further proof, those undisputed facts [UF 1 through 163] as to which there is no material dispute.

Dated: May 29, 2006

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF PETITIONING CREDITORS' MOTION FOR SUMMARY JUDGMENT (BIFURCATED PHASE - 1)** Date: June 26, 2006 Time: 2:00 p.m. Judge: The Honorable Peter W. Bowie Ctrm: 4

Petitioning creditors herein respectfully submit this Separate Statement of Undisputed Facts in support of their Motion for Summary Judgment against the alleged debtor Francis Lopez.

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UNDISPUTED MATERIAL FACTS	SUPPORTING EVIDENCE
CASE FILING AND JURISDICTION	
1. This case was commenced with an involuntary petition on June 30, 2005.	Docket Item 1.
2. This Court has jurisdiction under the involuntary petition.	28 U.S.C. § 1334(a) and 28 U.S.C. § 157(a) and (b)(1).
GENERAL AND BACKGROUND FACTS	
3. Francis and Madeleine Lopez were married in 1991.	Lopez Depo. page 63, lines 4-6.
4. Francis and Madeleine Lopez did not enter into a prenuptial agreement prior to their marriage.	Lopez Depo. page 63, lines 7-10.
5. Francis and Madeleine Lopez have maintained the same joint checking account with Compass Bank since 2004.	Lopez Depo. page 74, line 11-25; Lopez Depo. Exhibit 5; LSK Decl. ¶ 15, Exhibit N, CB 001-002.
6. According to Lopez's custom and practice, consistently applied, when he places a handwritten notation on a bill, that indicates that the bill has in fact been paid.	Lopez Depo. page 87, line 20 - page 88, line 6.
7. Noveon Systems is a Delaware corporation formed in May or June of 2003.	Lopez Depo. page 50, lines 7-15.
8. Lopez first became employed by Noveon Systems in the latter half of July, 2003.	Lopez Depo. page 49, lines 9-12.
9. Lopez was an officer of Noveon Systems from the time of its formation until late 2004 or sometime in mid 2005, at which point he resigned based on advice he received from attorneys.	Lopez Depo. page 52, line 11 - page 53, line 14; LSK Decl. at ¶ 14 (Madeleine's Depo.), page 36, lines 21-24.
10. Lopez has served as a director of Noveon Systems from or about the time of its formation, and cannot recall if he has ever resigned that position.	Lopez Depo. page 53, line 12 - page 54, line 3.
11. Lopez provides services to Noveon in a sales capacity and customer service liaison for scheduling work and related services.	Lopez Depo. page 54, line 22 - page 55, line 1.
12. Current compensation from Noveon Systems consists of a profit sharing plan in which he would receive a percentage of profits.	Lopez Depo. page 55, line 18 - page 56, line 2.

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13. Lopez received less than $12,500 in license fees from Noveon from January 1 to April 27, 2006.	Lopez Depo. page 58, line 8 - page 59, line 15.
14. Lopez has received less than $50,000 dollars in aggregate compensation in all categories from Noveon since its inception through and including April 27, 2006.	Lopez Depo. page 59, lines 17-23.
15. As of April 27, 2006, Lopez has received no profit sharing payments from Noveon (ever).	Lopez Depo. page 62, lines 20-23.
16. In the early summer of 2005, Lopez became licensed to sell life, health, and health insurance annuities and variable annuities in the State of Florida. He utilized that license in a couple of ventures, but quickly abandoned pursuit of that business activity.	Lopez Depo. page 47, line 21 - page 48, line 20.
17. Francis Lopez's income from all sources in calendar year 2005 was less than $50,000.	Lopez Depo. page 70, line 18 - page 71, line 1.
18. Lopez is the author of the document entitled "Francis Lopez Exhibit A List of Creditors."* *Hereinafter sometimes referred to as the "Creditor List" or "List of Creditors."	Lopez Depo. page 25, lines 8-9; Lopez Depo. Exhibit 17.
LOPEZ'S RESIDENCE HAS APPARENT EQUITY OF $405,000.00	
19. Lopez purchased his residence at 310 San Myrtle Trail in the first half of 2003 for the purchase price of $745,000.	Lopez Depo. page 101, line 18 - page 102, line 4.
20. The current amount of the obligations secured by the residence are approximately $750,000.	Lopez Depo. page 108, line 7 - page 109, line 2.
21. The current value of the residence is $1,295,000.00	See LFK Decl. at ¶ 2, Exhibit A.
22. The residence is encumbered by a mortgage to Lehman Brothers Bank in the amount of $750,000.00.	See LFK Decl. at ¶ 4, Exhibit C.
23. The residence is encumbered by a Home Equity Credit Line in the amount of $125,000.00, of which at least $65,000 has been drawn.	See Lopez Depo. page 116, line 7 - page 118, line 18; and LFK Decl. at ¶ 3, Exhibit B.
24. Lopez is entitled to a minimum homestead exemption in the amount of $75,000.00.	Cal. CCP § 704.730(a)(2).

25. The net apparent equity in the residence to an estate is $405,000.00.	Judicial Notice [FRE 201(b)(1)]: $1,295,000 - ($750,000 + $65,000 + $75,000) = $405,000
26. Other than his residence, Lopez has no assets of any significant value (more than $10,000 equity).	Stanly Decl. at ¶ 13.
THE TOTAL FORESEEABLE CLAIMS AGAINST THE LOPEZ ESTATE ARE AT LEAST $2,595,800.00	
27. Stanly holds claims against Lopez that total in excess of $2,435,800.00.	Stanly Decl. at ¶¶ 8-11.
28. Frederick Lopez holds claims against Lopez in the amount of $55,000.	See next section below.
29. Other entities hold claims against Lopez of approximately $105,000.00.	Stanly Decl. at ¶ 12..
LOPEZ OWES HIS FATHER - FREDERICK LOPEZ - $55,000 ($20,000 PRE-PETITION / $35,000 POST-PETITION BORROWING)	
30. As of May 9, 2005, Lopez owed his father – Frederick Lopez – $20,000 on account of money that Lopez had borrowed from him.	Lopez Depo. page 28, lines 17 - page 29, line 5.
31. As of June 30, 2005, none of the monies that Lopez had borrowed from his father had been repaid.	Lopez Depo. page 31, lines 12-16.
32. Since June 30, 2005, Lopez has borrowed an additional sum of $35,000 from his father.	Lopez Depo. page 30, lines 5-15.
33. Lopez did not include his father as a creditor on Exhibit A to his Answer (Lopez Depo. Exhibit 17) because he understood that it was not appropriate to include relatives on that list.	Lopez Depo., page 27, lines 13-20.
LOPEZ'S ATTORNEY WILL HAVE POST-PETITION GAP CLAIMS	
34. To the best of his recollection (as refreshed by his review of available documents), Lopez has not paid his attorney of record in this case anything since February 5, 2006.	Lopez Depo. at page 14, line 14 - page 16, line 15.

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ALLSTATE FLORIDIAN WAS NOT A CREDITOR ON JUNE 30, 2005, BECAUSE THE PREMIUM DUE FOR THE 7/16/04 THROUGH 7/16/05 PERIOD WAS FULLY PAID ON MARCH 16, 2005	
35. Lopez has produced any and all documents evidencing any and all payments he made to Allstate Floridian (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 8-9; Lopez Depo. Exhibit 1.
36. Lopez claims to have been indebted to Allstate Floridian (insurance company) in the approximate amount of $1,900 as of June 30, 2005.	Lopez Depo. Exhibit 17 at page 1.
37. However, as of June 30, 2005, Lopez was not indebted to Allstate Floridian indemnity company in any amount because the premium period then in effect (7/16/04 to 7/16/05), payments for the prior period would have been completed before June 30, 2005, and the obligation to pay for the upcoming period would not begin to accrue until July 17, 2005, with the first payment due in September of that year.	Lopez Depo. page 154, line 25 - page 155, line 20; Lopez Depo. Exhibit 25.
38. The coverage period for the insurance policy maintained by Lopez through Allstate Floridian Indemnity Company ran from 7/16/04 to 7/16/05.	LSK Decl. ¶ 4, Exhibit C, Allstate 010.
39. The final installment for the premium for that period became due on November 21, 2004.	LSK Decl. ¶ 4, Exhibit C, Allstate 010.
40. The final installment was not timely paid, the policy was cancelled for nonpayment of the premium on March 1, 2005 (Allstate 014), and subsequently paid, and reinstated without a lapse of coverage on March 16, 2005 (Allstate 018).	LSK Decl. ¶ 4, Exhibit C, Allstate 010, 014 and 018.
AMERICAN EXPRESS WAS NOT A CREDITOR ON JUNE 30, 2005	
41. Lopez has produced any and all documents evidencing any and all payments he made to American Express (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 14, lines 10-11; Lopez Depo. Exhibit 1.
42. Lopez asserts that he has an account with American Express (378394980228307) upon which he owed $22,000 as of June 30, 2005.	Lopez Depo. Exhibit 17 (creditor list) at page 17-3.

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43. However, American Express indicates that there was no amount due and owing from Lopez on June 30, 2005.	LSK Decl. ¶ 5, Exhibit D; Lopez Depo. page 155, line 21 - page 160, line 9.
AMERICAN HOME SHIELD WAS NOT A CREDITOR ON JUNE 30, 2005	
44. Lopez asserts that he was indebted to American Home Shield in the amount of $128.00 on June 30, 2005.	Lopez Depo. Exhibit 17 at page 3.
45. Lopez has produced any and all documents evidencing any and all payments he made to American Home Shield (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 14, lines 4-5; Lopez Depo. Exhibit 1.
46. The Lopez contract with American Home Shield that was in place on the Petition Date (06/30/05) began on July 16, 2004 and did not expire until July 16, 2005.	American Home Shield - "Contract Home Page" - ASH 0002 (LSK Decl. ¶ 6, Exhibit E).
BANK OF AMERICA RECEIVED BOTH PRE-PETITION PREFERENCE PAYMENTS AND VOIDABLE POST-PETITION PAYMENTS	
47. Lopez asserts that as of June 30, 2005, he was indebted to Bank of America in the approximate amount of $2,386.	Lopez Depo. Exhibit 17 at page 2.
48. Lopez has produced any and all documents evidencing any and all payments he made to Bank of America (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 12-13; Lopez Depo. Exhibit 1.
49. On May 6, 2005, Lopez transferred $50.00 on account of the Bank of America obligation.	LSK Decl., ¶ 7, Exhibit F, page 1.
50. On or about May 17, 2005, Lopez caused $50.00 to be paid to Bank of America on account of the pre-petition obligation.	Lopez Depo. page 172, line 25 - page 173, line 23.
51. On June 22, 2005, Lopez paid Bank of America $54.00 dollars on account of the debt he owed to them as identified on his "list of creditors."	Lopez Depo. page 83, lines 1-15; Lopez Depo. Exhibit 7, page 1 (check no.1617, $54.00).
52. On June 26, 2005, Lopez transferred $54.00 to Bank of America on account of this debt.	LSK Decl. ¶ 7, Exhibit F, page 2.

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53. On June 28, 2005, Lopez transferred $54.00 to Bank of America on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0185.
54. On June 28, 2005, Bank of America received a payment of $54.00 on account of the obligation reflected in the "list of creditors."	Lopez Depo. page 83, line 19 - page 85, line 6; Lopez Depo. Exhibit 7, page 1 (check no. 1617).
55. At some point in the month of June, but before June 30, 2005, Lopez made a payment of $54.00 on account of that obligation.	Lopez Depo. page 171, lines 1-17; page 171, line 22 - page 172, line 12; Lopez Depo. Exhibit 27.
56. On August 11, 2005, Lopez transferred $292.50 to Bank of America on account of this pre-petition obligation.	LSK Decl. ¶ 7, Exhibit F, page 3.
BANK CARD SERVICES RECEIVED PRE-PETITION PREFERENCE PAYMENTS AND ITS ACCOUNT WAS SUBJECT TO A BONA FIDE DISPUTE	
57. Lopez was indebted to Bank Card Services in some amount as of June 30, 2005.	Lopez Depo. Exhibit 17 at page 2.
58. Lopez has produced any and all documents evidencing any and all payments he made to Bank Card Services (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 21-22; Lopez Depo. Exhibit 1.
59. Bank Card Services received payment on account during the period of April 1 through June 30, 2005.	Lopez Depo. page 175, lines 13-18.
60. However, Lopez has a bonafide dispute over this creditor's unilateral position of late charges on the account because the account mechanism required an automatic deduction for at least the minimum amount due on the account. This account is subject to a bonafide dispute.	Lopez Depo. page 175, line 18 - page 177, line 10.
CINGULAR RECEIVED EITHER A PRE-PETITION PREFERENCE PAYMENT OR A VOIDABLE POST-PETITION TRANSFER	
61. Lopez has produced any and all documents evidencing any and all payments he made to Cingular Wireless (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 23-24; Lopez Depo. Exhibit 1.
62. On June 19, 2005, Lopez owed Cingular $313.40.	Lopez Depo. page 91, lines 3-11; Lopez Depo. Exhibit 18.

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63. As of June 19, 2005, Lopez was past due in obligations owed to Cingular in the amount of $151.81.	Lopez Depo. page 91, lines 3-11; Lopez Depo. Exhibit 18; Lopez Depo. Exhibit 9 at page 4.
64. At some time between June 19, 2005, and January 10, 2006, the obligation owed to Cingular as of June 19, 2005, was paid in full.	Lopez Depo. page 91, lines 3-20; page 99, line 14 - page 100, line 19; Lopez Depo. Exhibit 9 at page 3.
CITICARD RECEIVED PRE-PETITION PREFERENCE PAYMENTS	
65. Lopez has produced any and all documents evidencing any and all payments he made to Citi Cards (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 14, lines 6-7; Lopez Depo. Exhibit 1.
66. On April 18, 2005, Lopez transferred $379.00 to Citicard on account of the pre-petition obligation.	LSK Decl. ¶ 8, Exhibit G, page 2; and Lopez Depo. page 180, lines 7-14; page 181, lines 3-12.
67. On April 19, 2005, Lopez transferred $379.00 to Citibank.	LSK Decl. ¶ 15, Exhibit N, CB 0172; and Lopez Depo. page 180, lines 7-14; page 181, lines 3-12.
68. On May 18, 2005, Lopez transferred $379.00 to Citicard on account of the pre-petition obligation.	LSK Decl. ¶ 8, Exhibit G, page 3; and Lopez Depo. page 180, lines 7-14; page 181, lines 3-12.
69. On May 19, 2005, Lopez transferred $379.00 to Citibank on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0181; and Lopez Depo. page 180, lines 7-14; page 181, lines 3-12.
70. On June 18, 2005, Lopez transferred $379.00 to Citicard on account of the pre-petition obligation.	LSK Decl. ¶ 8, Exhibit G, page 4; and Lopez Depo. page 179, lines 8-23; Lopez Depo. Exhibit 29.
71. On June 20, 2005, Lopez transferred $379.00 to Citibank.	LSK Decl. ¶ 15, Exhibit N, CB 0184.
72. On June 30, 2005, Lopez was indebted to Citi Card/AA Advantage Card in the amount of $32,136.57.	Lopez Depo. page 178, line 23 - page 179, line 23.
COASTAL COMMUNITY INSURANCE WAS NOT A CREDITOR ON JUNE 30, 2005	
73. The creditor identified as Coastal Community Insurance is the insurance company that provides flood insurance for the Lopez residence.	Lopez Depo. page 119, line 4-9.

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74. Lopez has produced any and all documents evidencing any and all payments he made to Coastal Community Insurance (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 12, line 25 - page 13 line 1; Lopez Depo. Exhibit 1.
75. An insurance policy was issued by Coastal Community Insurance for 7/30/04-7/30/05.	LSK Decl. ¶ 9, Exhibit H.
76. By August 9, 2004, that premium had been paid in full.	LSK Decl. ¶ 9, Exhibit H, pages 2-4.
77. The premiums for the flood insurance policy provided by Coastal Community Insurance are paid by Lopez's lender from an escrow account, and are not paid by Francis or Madeleine Lopez.	Lopez Depo. page 119, line 4 - page 120, line 6.
78. As of June 30, 2005, Lopez was not indebted to Coastal Community Insurance because the insurance for the period beginning July 30, 2004 and ending July 30, 2005, had been paid, and the next coverage period – July 30, 2005 through July 30, 2006 – was not due, owing, or accrued.	Lopez Depo. page 120, lines 7-11; Lopez Depo. Exhibit 10; Lopez Depo. page 121, line 9 - page 125, line 13.
COX COMMUNICATIONS RECEIVED A VOIDABLE POST-PETITION TRANSFER	
79. As of June 30, 2005, Lopez was indebted to Cox Communications in the amount of $112.	Lopez Depo. Exhibit 17, page 2; Lopez Depo. page 135, line 10 - page 136, line 13; Lopez Depo. Exhibit 21.
80. Lopez has produced any and all documents evidencing any and all payments he made to Cox Communications (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 16-17; Lopez Depo. Exhibit 1.
81. At some point after June 30, 2005, the entire amount of the pre-petition obligation owed to Cox Communication was paid in full by Lopez.	Lopez Depo. page 136, lines 16-20; see also page 134, line 23 - page 135, line 3; page 133, line 4-18; Lopez Depo. Exhibit 5, page 4, column 3, row 2 (check no. 1558).

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THE CLAIM OF FT. WALTON BEACH MEDICAL CENTER IS THE SUBJECT OF A BONA FIDE DISPUTE	
82. Lopez has produced any and all documents evidencing any and all payments he made to Fort Walton Beach Medical Center (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 14, lines 12-13; Lopez Depo. Exhibit 1.
83. On June 30, 2005, Lopez was indebted to the Fort Walton Beach Medical Center in the approximate amount of $1,600 dollars.	Lopez Depo. Exhibit 17 at page 4.
84. However, this obligation is the subject of a bonafide dispute as to Lopez's liability. The dispute arises from the fact that the admitting doctor – and an agent of the creditor – affirmatively represented to Lopez that the treatments being made would be covered by his insurance, when in fact they were not. Lopez's nonpayment of the bill arises from this dispute.	Lopez Depo. page 182, line 5 - page 185, line 4.
HOUSEHOLD BANK RECEIVED PRE-PETITION PREFERENCE PAYMENTS	
85. On June 30, 2006, Lopez was indebted to Household Bank/ HSBC in the approximate amount of $5,000.	Lopez Depo. Exhibit 17 at page 3.
86. Lopez has produced any and all documents evidencing any and all payments he made to Household Bank/HSBC (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 14, lines 8-9; Lopez Depo. Exhibit 1.
87. On or about May 16, 2005, Lopez made a payment on account of the Household Bank obligation in the amount of $50.	Lopez Depo. page 185, lines 5-19; Lopez Depo. Exhibit 31.
88. On May 17, 2005, Lopez transferred $100.00 to Household Bank on of his antecedent debt.	LSK Decl. ¶ 10, Exhibit I, page 7.
89. The May 17, 2005 payment to Household Bank was $223.91 less than the minimum payment due in that cycle.	LSK Decl. ¶ 10, Exhibit I, page 6.
90. Other payments were also made to Household Bank on account of the pre-petition obligation in the months of April and June, 2005.	Lopez Depo. page 185, line 20 - page 186, line 4.

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KELLY PLANTATION OWNERS ASSOCIATION RECEIVED A VOIDABLE POST-PETITION TRANSFER	
91. Lopez has produced any and all documents evidencing any and all payments he made to Kelly Plantation Owners Association (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; Lopez Depo. Exhibit 1.
92. On June 30, 2005, Lopez was indebted to the Kelly Plantation Homeowners Association in the amount of $550 on account of home owner association dues.	Lopez Depo.. Exhibit 17, page 17-1; LSK Decl. ¶ 11, Exhibit J, pages 6-7.
93. These association bills are generated quarterly, and Lopez has no control over the assessments made.	Lopez Depo. page 188, lines 1-22; page 189, lines 12-20.
94. The obligation owed to Kelly Plantation Homeowners Association on June 30, 2005, has subsequently been paid by Lopez.	Lopez Depo. page 190, lines 2-22; Lopez Depo. Exhibit 32.
95. At some point in time after June 30, 2005, but before December 12, 2005, that obligation had been paid in full.	LSK Decl. ¶ 11, Exhibit J, pages 5 & 7.
NORTHWEST FLORIDA DAILY NEWS WAS A CREDITOR ON JUNE 30, 2005, BECAUSE ITS SUBSCRIPTION HAD BEEN PRE-PAID [IT ALSO RECEIVED PRE-PETITION TRANSFERS]	
96. Lopez has produced any and all documents evidencing any and all payments he made to Northwest Florida Daily News (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 6-7; Lopez Depo. Exhibit 1.
97. On May 17, 2005, Lopez paid the Northwest Florida Daily News the sum of $97.39. The payment included past due amounts plus an advance payment for the next three months.	Lopez Depo. page 85, line 21 to page 86 line 6; page 90 line 17-22; Lopez Depo. Exhibit 8 at page 4.
98. Of the $97.39 payment to the Northwest Florida Daily News made May 17, 2005, approximately $55.39 was made on account of the past due obligation, and the remaining $42.00 was an advance payment for the next three months.	Lopez Depo. page 85, line 21 to page 86 line 6; page 90 line 17-22; and Exhibit 8, page 1 ("subscription options" in the upper right hand corner) [i.e. subscription rate for 16 weeks (~3 months) equals $42.00].
99. When completing his list of creditors, (Lopez Depo. exhibit 17) Lopez was only estimating an amount due to the Northwest Florida Daily News.	Lopez Depo. page 191, line 13 - page 192, line 8.

100. If any amount was in fact owed to Northwest Florida Daily News, it was paid in full post-petition.	Lopez Depo. page 192, lines 9-15
OKALOOSA GAS DISTRICT RECEIVED BOTH PRE-PETITION PREFERENCES AND VOIDABLE POST-PETITION TRANSFERS	
101. Lopez has produced any and all documents evidencing any and all payments he made to Okaloosa Gas District (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 4-5; Lopez Depo. Exhibit 1.
102. On May 3, 2005, Lopez transferred $171.70 to Okaloosa Gas District.	LSK Decl. ¶ 15, Exhibit N, CB 0173.
103. As of May 19, 2005, Lopez was indebted to the Okaloosa Gas District in the amount of $82.74 (the "5/19/05 obligation").	Lopez Depo. Exhibit 22 at page 1.
104. On June 15, 2005, Lopez paid the sum of $82.74 on account of the 5/19/05 obligation; however the payment was untimely made and a late charge in the amount of $8.27 was imposed.	Lopez Depo. Exhibit 22 at page 2.
105. As of June 30, 2005, Lopez was indebted to the Okaloosa Gas District in the amount of $44.33.	Lopez Depo. Exhibit 17, page 1; LSK Decl. ¶ 12, Exhibit K, page 3; and Lopez Depo. Exhibit 17 at page 1; Lopez Depo. Exhibit 22 at page 2; Lopez Depo. Exhibit 12 at page 5.
106. On July 20, 2005, Lopez paid Okaloosa Gas District $44.33 on account of the pre-petition obligation.	LSK Decl. ¶ 12, Exhibit K, page 3.
107. On July 20, 2005, the pre-petition obligation to Okaloosa Gas District was paid in full, however the payment was untimely and a late charge of $3.61 was imposed.	Lopez Depo. page 138, line 8 - page 139, line 4; Lopez Depo. Exhibit 12 at page 4.
108. On August 3, 2005, Lopez transferred $34.10 to the Okaloosa Gas District.	LSK Decl. ¶ 15, Exhibit N, CB 0192.
109. On September 29, 2005, Lopez transferred $46.38 to Okaloosa Gas District.	LSK Decl. ¶ 15, Exhibit N, CB 0204; and Lopez Depo. page 83, line 19 - page 85, line 6; Lopez Depo. Exhibit 6, page 3 (check no. 1682).

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110. On November 3, 2005, the Okaloosa Gas District received a payment in the amount of $37.32 from Lopez on account of obligations identified in the "list of creditors."	Lopez Depo. page 83, line 1 - page 85, line 6; Lopez Depo. Exhibit 7, page 3 (check no. 1689).
111. Lopez generally pays the Okaloosa Gas District bills from the Compass Bank checking account.	Lopez Depo. page 139, line 17 - page 140, line 12.
PROGRESSIVE INSURANCE WAS NOT A CREDITOR ON JUNE 30, 2005	
112. As of June 30, 2005, Lopez claims to have been indebted to Progressive Insurance Company in the amount of $157.20.	Lopez Depo. page 140, lines 18-21; Lopez Depo. Exhibit 17 at page 1.
113. Lopez has produced any and all documents evidencing any and all payments he made to Progressive Insurance (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	LSK Decl. ¶¶ 2-3, Exhibits A-B (hereinafter "Lopez Depo.") page 12, lines 1-8, 20-24; Lopez Depo. Exhibit 1.
114. However, as of June 30, 2005, no amount was actually due to Progressive, because the existing policy was in effect at that time and was not up for renewal until August 8, 2005.	Lopez Depo. Exhibit 13 at page 3.
115. However, had any amount been due and owing to Progressive on June 30, 2005, it was subsequently paid by Lopez.	Lopez Depo. page 142, lines 18-24.
CITIBANK — ON THE QUICKEN PLATINUM CARD — RECEIVED BOTH PRE-PETITION PREFERENCES AND VOIDABLE POST-PETITION TRANSFERS	
116. Lopez has produced any and all documents evidencing any and all payments he made to Quicken Platinum Card (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 1-2; Lopez Depo. Exhibit 1.
117. On May 2, 2005, Lopez transferred $32.09 to Quicken Platinum Card on account of the pre-petition obligation.	LSK Decl. ¶ 8, Exhibit G, page 5.
118. On June 27, 2005, Lopez transferred $18.00 to Quicken Platinum Card on account of the pre-petition obligation.	LSK Decl. ¶ 8, Exhibit G, page 7.

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119. As of June 30, 2005, Lopez was indebted to Quicken Platinum Select in the approximate amount of $848. At some point between May 24, 2005, and June 23, 2005, Lopez paid $18 on the Quicken Platinum Select card obligation.	Lopez Depo. page 194, line 17 - page 195, line 2; Lopez Depo. Exhibit 33 at page 2.
120. On August 1, 2005, Lopez transferred $40.00 to Quicken Platinum Card on account of the pre-petition obligation.	LSK Decl. ¶ 8, Exhibit G, page 8.
STANLY IS AN INSIDER BECAUSE BOTH HE AND LOPEZ OWN 50% OF PRISM ADVANCE TECHNOLOGIES INC. ("PRISM")	
121. Lopez is a 50% shareholder of Prism.	See ¶ 1 of the Declaration of Francis Lopez in Opposition to Motion for Relief from Stay, Southern District of California U.S. Bankruptcy Court Case No. 03-07777-INV7, Docket Item 45.
122. Alan Stanly is a 50% shareholder, officer and director of Prism.	Stanly Decl. at ¶ 2.
TEXACO RECEIVED BOTH PRE-PETITION PREFERENCES AND VOIDABLE POST-PETITION TRANSFERS	
123. Lopez has produced any and all documents evidencing any and all payments he made to Texaco/Shell (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 10-11; Lopez Depo. Exhibit 1.
124. On April 4, 2005, Lopez transferred $40.00 to Texaco on account of the pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, Compass Bank ["CB"] 0030.
125. On May 9, 2005, Lopez transferred $20.00 to Texaco on account of the pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0034.
126. As of June 30, 2005, Lopez was indebted to Texaco/Shell Oil in the amount of $350.20.	Lopez Depo. Exhibit 17 at page 2; Lopez Depo. Exhibit 23 at page 1; Lopez Depo. page 146, lines 2-23; page 147, lines 14-17.
127. Texaco accepted payment on accounts from Lopez after June 30, 2005.	Lopez Depo. page 173, line 24 - page 174, line 5.
128. On or about August 9, 2005, Lopez paid $50.99 on account of the pre-petition obligation.	Lopez Depo. page 147, lines 18-23; Lopez Depo. Exhibit 23 at page 2.

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129. On September 26, 2005, Lopez made a payment to Texaco/Shell Oil in the amount of $10 on account of the pre-petition obligation.	Lopez Depo. Exhibit 14 at page 4.
130. On October 24, 2005, Lopez made a payment to Texaco/Shell in the amount of 25.00 on account of the pre-petition obligation.	Lopez Depo. Exhibit 14 at pages 4-5.
131. The post-petition payments were made from the Compass Bank Checking account.	Lopez Depo. page 148, lines 4-6.
VALLEY FORGE LIFE INSURANCE IS NOT A CREDITOR BECAUSE LOPEZ NEVER OWED IT ANY MONEY (AND NEITHER DID HIS WIFE, MADELEINE) AS OF JUNE 30, 2005	
132. Lopez has asserted that as of June 30, 2005, he is indebted to the Valley Forge Life Insurance company in the amount of "$0.00($486.00 per year)".	Lopez Depo. Exhibit 17 at page 3.
133. Lopez has produced any and all documents evidencing any and all payments he made to Valley Forge Life Insurance (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 14, lines 2-3; Lopez Depo. Exhibit 1.
134. However, Lopez is not the account debtor for that obligation.	Lopez Depo. page 195, line 22 - page 197, line 8; see also Lopez Depo. Exhibit 16.
135. Madeleine Lopez — the alleged debtor's spouse — not Lopez himself, is the account debtor obligated to pay the Valley Forge Life Insurance obligation.	LSK Decl. ¶ 13, Exhibit L, pages 2-3.
136. Madeleine Lopez, the account debtor with respect to the Valley Forge Life Insurance Obligation, pays that obligation through Noveon Systems, Inc. (a corporation in which she is the sole owner/shareholder) of which she is the sole authorized signatory on its bank accounts, and signs all of its checks upon reviewing the same.	LSK Decl. ¶ 13, Exhibit L, page 3 and LSK Decl. ¶ 14, Exhibit M [Madeleine Lopez Depo. Transcript ("Excerpts")], page 36, lines 10-24; page 39, lines 10-17; page 41, lines 20-23; page 53, line 2 - page 54, line 4; and page 54, line 23 - page 55, line 6.
137. There was no amount due to Valley Forge Life Insurance Company on June 30, 2006, because that annual premium had been paid at or shortly after February 5, 2005.	Lopez Depo. Exhibit 34 (annual renewal premium due February 5, 2005); Lopez Depo. page 198, line 24 - page 199, line 18.

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THE VERIZON CLAIM WAS DISPUTED AS OF JUNE 30, 2005, BUT SUBSEQUENTLY PAID BY A VOIDABLE POST-PETITION TRANSFER	
138. Lopez has produced any and all documents evidencing any and all payments he made to Verizon Wireless (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12 lines 1-8; page 13, lines 14-15; Lopez Depo. Exhibit 1.
139. On or about April 21, 2005, Verizon Wireless forwarded to Lopez an invoice for charges totaling $262.47.	Lopez Depo. Exhibit 24 (the "4/21/05 invoice").
140. Lopez disputed the validity and amount of the 4/21/05 invoice to the extent that it exceeded $35.	Lopez Depo. page 151, line 5 - page 152, line 21.
141. As of June 30, 2005, the disputed portion of the Verizon obligation – in excess of $200 – had not been paid; however the disputed obligation was ultimately paid by Lopez on August 3, 2005.	Lopez Depo. page 153, line 17 - page 154, line 19; Lopez Depo. Exhibit 15 at page 3.
WAYNE WISE RECEIVED A PRE-PETITION PREFERENCE	
142. Lopez has produced any and all documents evidencing any and all payments he made to Wayne Wise (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, line 35 - page 14, line 1; Lopez Depo. Exhibit 1.
143. Lopez obligation to Wayne M. Wise is memorialized by a promissory note dated June 16, 2004.	Lopez Depo. page 133, line 11-16; Lopez Depo. Exhibit 19.
144. The obligation owed by Lopez to Wayne Wise is unsecured.	Lopez Depo. page 110, line 21 - page 113, line 10.
145. On May 17, 2005, Lopez paid Wayne Wise the sum of $900 for the interest that had accrued under the June 16, 2004, promissory note.	Lopez Depo. page 113, line 17 - page 115, line 22.
146. Other than the payment of $900 interest paid on May 17, 2005, no other payments have been made on the promissory note to Wayne M. Wise.	Lopez Depo. page 201, lines 20-23.
147. That payment was not made in accordance with the terms of the promissory note (i.e. it was less than the full amount due).	Lopez Depo. Exhibit 19.

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UNION BANK OF CALIFORNIA RECEIVED BOTH PRE-PETITION PREFERENCES AND AVOIDABLE POST-PETITION TRANSFERS	
148. Lopez has produced any and all documents evidencing any and all payments he made to Union Bank of California (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 18-19; Lopez Depo. Exhibit 1.
149. In April, May, and June of 2005, Lopez paid $1,000 per month to Union Bank on account of its compromise/settlement agreement.	Lopez Depo. page 204, line 3.
150. On April 13, 2005, Lopez transferred $500.00 to Union Bank of California on account of the pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0168.
151. On April 13, 2005, Lopez made a second $500.00 transfer to Union Bank on account of the pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0169.
152. On May 18, 2005, Lopez transferred $1,000.00 to Union Bank of California on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0180.
153. As of June 30, 2005, Lopez was indebted to Union Bank in an amount at least equal to $4,000.	Lopez Depo. Exhibit 17 at page 2.
154. That obligation reflected a settlement compromise agreement with Union Bank.	Lopez Depo. page 202, lines 1-16.
155. Since June of 2005, Union Bank has received monthly payments that have completely satisfied Lopez's compromise/settlement obligation, and all payments were made from the Compass Bank account.	Lopez Depo. page 204, line 10 - page 207, line 2; Lopez Depo. Exhibit 6, page 3 (check no. 1683); Lopez Depo. Exhibit 6, page 4 (check no. 1676); Lopez Depo. Exhibit 7, page 1 (check no. 1620).
156. On July 8, 2005, Union Bank received a payment from Lopez in the amount of one thousand dollars on account of the debt owed to that entity and referred to on the debtor's "list of creditors."	Lopez Depo. page 83, line 1 - page 85, line 6; Lopez Depo. Exhibit 7, page 1 (check no. 1620, $1,000 dated 6/30/05 and cleared on 7/8/05); and LSK Decl. ¶ 15, Exhibit N, CB 0186.
157. On August 8, 2005, Lopez transferred $1,000.00 to Union Bank of California on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0191.
158. On September 8, 2005, Union Bank of California received a payment in the amount of $1,000 from Lopez on account of the obligation reflected in the "list of creditors."	Lopez Depo. page 83, line 19 - page 85, line 6; Lopez Depo. Exhibit 6, page 4, column 1, row 2 (check no. 1676); and LSK Decl. ¶ 15, Exhibit N, CB 0199.

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159. On October 6, 2005, Union Bank of California received a payment in the amount of $1,000 from Lopez.	Lopez Depo. page 83, line 19 - page 85, line 6; Lopez Depo. Exhibit 6, page 3 (check no. 1683); and LSK Decl. ¶ 15, Exhibit N, CB 0206.
160. On or about October 31, 2005, Lopez transferred $1,000.00 to Union Bank of California on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0210.
161. On November 7, 2005, Union Bank received a payment from Lopez in the amount of one thousand dollars on account of the obligation owed to it as a creditor identified on the debtor's "list of creditors."	Lopez Depo. page 83, line 1 - page 85, line 6; Lopez Depo. Exhibit 7, page 3 (check no. 1688 for $1,000).
162. On December 12, 2005, Union Bank received a payment from Lopez in the amount of one thousand dollars on account of the obligation owed to it as a creditor identified on the debtor's "list of creditors."	Lopez Depo. page 83, line 1 - page 85, line 6; Lopez Depo. Exhibit 7, page 2 (check no. 1692 for $1,000); and LSK Decl. ¶ 15, Exhibit N, CB 0213.
163. On January 11, 2006, Lopez transferred $1,000.00 to Union Bank of California on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0216.

Dated:_______________

ROBBINS & KEEHN
A Professional Corporation

By: /s/ L. Scott Keehn
L. Scott Keehn
Attorneys for **Petitioning Creditors**

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159. On October 6, 2005, Union Bank of California received a payment in the amount of $1,000 from Lopez.	Lopez Depo. page 83, line 19 - page 85, line 6; Lopez Depo. Exhibit 6, page 3 (check no. 1683); and LSK Decl. ¶ 15, Exhibit N, CB 0206.
160. On or about October 31, 2005, Lopez transferred $1,000.00 to Union Bank of California on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0210.
161. On November 7, 2005, Union Bank received a payment from Lopez in the amount of one thousand dollars on account of the obligation owed to it as a creditor identified on the debtor's "list of creditors."	Lopez Depo. page 83, line 1 - page 85, line 6; Lopez Depo. Exhibit 7, page 3 (check no. 1688 for $1,000).
162. On December 12, 2005, Union Bank received a payment from Lopez in the amount of one thousand dollars on account of the obligation owed to it as a creditor identified on the debtor's "list of creditors."	Lopez Depo. page 83, line 1 - page 85, line 6; Lopez Depo. Exhibit 7, page 2 (check no. 1692 for $1,000); and LSK Decl. ¶ 15, Exhibit N, CB 0213.
163. On January 11, 2006, Lopez transferred $1,000.00 to Union Bank of California on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0216.

Dated: 5/29/06

ROBBINS & KEEHN
A Professional Corporation

By: L. Scott Keehn
L. Scott Keehn
Attorneys for **Petitioning Creditors**

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DOCKET NUMBER 56-3

L. Scott Keehn (SBN 61691)
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Telephone: (619) 232-1700

Attorneys for **Petitioning Creditors**

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **DECLARATION OF ALAN STANLY IN SUPPORT OF PETITIONING CREDITORS' MOTION FOR SUMMARY JUDGMENT (BIFURCATED PHASE - 1)** Date: June 26, 2006 Time: 2:00 p.m. Judge: The Honorable Peter W. Bowie Ctrm: 4

I, ALAN STANLY, declare:

1. I am over the age of 18, and am a Petitioning Creditor in this Involuntary Bankruptcy proceeding. I have first-hand knowledge of all the following facts, and if called as a witness could and would competently testify thereto.

2. In or about August 1994, I formed Computer Handyman, Inc., later renamed Prism Advanced Technologies, Inc. ("Prism"). In 1996, I transferred Alleged Debtor Francis Lopez ("Lopez") 50% of my corporation, and we began conducting business together. I was Chairman and President, while Lopez was Prism's treasurer, Vice Chairman and Vice President. Lopez later created and assumed the titles of CEO and CFO.

/ / /

3. Prism is a California corporation that developed primarily transportation software, and licensed such software, as well as computer hardware and services. I am a computer programmer by trade and created the software that became the basis of Prism's products. I am a 50% shareholder of Prism, and Lopez owns the remaining 50%.

4. In or about November 2002, through March 2003, a dispute arose between Lopez and me concerning certain expenditures he made for personal purposes. I also learned that he had formed a competing business venture, and had used Prism's money to fund it. This was the beginning of the end for Prism.

5. On April 30, 2003, Lopez and I received a letter from Union Bank of California which demanded payment on a Prism bank loan (approx. $300,000), which Lopez and I had personally guaranteed.

6. On or about June 26, 2003, two civil collection actions were filed against Lopez, Prism and me: (1) *Union Bank of California v. Lopez*, San Diego Superior Court Case Number GIN 030827; and, (2) *Pacific Carlsbad Partners, LLC v. Prism Advanced Technologies, Lopez and Stanly*, San Diego Superior Court Case Number GIC 813397.

7. On August 22, 2003, an involuntary Chapter 7 Bankruptcy Petition was filed against Prism in the United States Bankruptcy Court for the Southern District of California, Case Number 03-07777 (the "Prism Bankruptcy"). During the course of the Prism Bankruptcy, I purchased substantially all of Prism's assets, including all disputed and unliquidated claims against Lopez.

8. On September 20, 2004, a Judgment was entered against Lopez, in my favor, in the principal amount of $50,000 in *Union Bank of California v. Lopez*, San Diego Superior Court Case Number GIN 030827 (the "Union Bank Judgment").

9. Lopez has not paid any portion of the Union Bank Judgment, and I remain one of his judgment creditors. My claim is memorialized in an abstract of judgment in the principal amount of $50,000, issued September 30, 2004, and recorded in the office of the County Recorder for the County of San Diego, State of California on May 24, 2005, as document number 2005-0437287 (the "Abstract"). A true and correct copy of the Abstract is attached as Exhibit A to this

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declaration. No portion of the Union Bank Judgment has been satisfied. I am informed and believe that enforcement of the Union Bank Judgment is not stayed.

10. I have an additional claim against Lopez in the amount of $2,000 based on the sanctions awarded to me against him on June 24, 2005 by the Honorable H. Lee Sarokin, the discovery referee in early litigation between Lopez and me, entitled *Lopez, et al. v. Stanly, et al.* (San Diego Superior Court Case No. GIN029692 and related cross actions). This sanction award has not been withdrawn, and no part of those sanctions have been paid.

11. In addition to the Union Bank Judgment ($50,000), and the $2,000 sanctions award, I also have the following claims against Lopez (some of which were acquired when I purchased Prism's assets) which I believe he would contend are the subject of a bona fide dispute:

(A) Breach of contract claims pertaining to loans Lopez caused Prism to make to himself as an officer of Prism in the approximate amount of $150,000;

(B) Fraudulent transfer claims pertaining to: (I) payments Lopez caused Prism to make to, *inter alia*, Lopez's personal credit cards and other bills in an amount in excess of $25,000; and (ii) unauthorized transfers of Prism's furniture, computers and other assets to Lopez in an amount in excess of $15,000;

(C) Prism's shareholder derivative action for, *inter alia*, breach of fiduciary duty, pertaining to: (I) lost revenue in the approximate amount of $13,800 per month for certain maintenance contracts, the revenue which was not received due to Lopez's misconduct in connection with a potential receivership sale of Prism's assets (Lopez thwarted the sale and instead caused the involuntary bankruptcy petition to be filed against Prism); and (ii) Lopez's misconduct during the liquidation of Prims's assets — I am informed and believe that this claim has an approximate value of $1,000,000;

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(D) Claims for, *inter alia*, unfair competition and fraud arising from Lopez's unauthorized use and sale of certain computer software;

(E) The claims that I now hold after having purchased them from Prism: (I) loans to Lopez as an officer of that corporation - $150,000; (ii) fraudulent transfer claims for payments on his credit cards for personal expenses - $25,000, and his expropriation of his personal desk - $15,000; (iii) wire tapping under California Penal Code § 631; and (iv) breach of fiduciary duty claims - $1,000,000.00; and

(F) Wire tapping - statutory damage, $5,000.00.

12. I am also an officer, director and shareholder of the entities listed below which have claims against Lopez which I believe he would contend are the subject of a bona fide dispute:

(A) Enterprise Technology Alliance, Inc. claims acquired from Herman Miller/ Citi Bank arising out of Lopez's breach of guarantees of personal property leases - $90,000.00;

(B) Micro Dynasty (tenant in professional building) - statutory wire tapping damages under California Penal Code § 631 - $5,000.00; and

(C) Susan Katz - statutory wire tapping damages under California Penal Code § 631 - $5,000.00.

13. On May 9, 2005, I caused a judgment debtor's exam of Lopez to be taken in Fort Walton Beach, Florida. I have reviewed the transcript of that examination. Based upon that review, it is apparent that other than the equity in his residence, Lopez has no significant assets

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that will be available to his estate. By "significant assets," I mean assets which when sold at a fair market value would yield $10,000.00 or more after liens against the item have been paid.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on May 29, 2006, at San Marcos, California.

/s/ Alan Stanly
ALAN STANLY

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that will be available to his estate. By "significant assets," I mean assets which when sold at a fair market value would yield $10,000.00 or more after liens against the item have been paid.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on May 29, 2006, at San ~~Diego~~ Marcos, California.

ALAN STANLY

ROBBINS & KEEHN, APC
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EXHIBIT A

EJ-001

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name and address)*: TEL NO.:
[X] Recording requested by and return to: (858) 259-2868
Timothy P. Dillon, SBN 190839
Timothy P. Dillon, Esq.
Weintraub Dillon PC
12520 High Bluff Drive, Suite 260
San Diego, CA 92130
[X] ATTORNEY FOR [X] JUDGMENT CREDITOR [ ] ASSIGNEE OF RECORD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
STREET ADDRESS: 325 South Melrose
MAILING ADDRESS: 325 South Melrose
CITY AND ZIP CODE: Vista, CA 92083
BRANCH NAME: North County Division

FOR RECORDER'S USE ONLY

PLAINTIFF: Union Bank of California, N.A.

DEFENDANT: Alan Stanly and Francis Lopez

ABSTRACT OF JUDGMENT [ ] **Amended**

CASE NUMBER: GIN 030827

FOR COURT USE ONLY

1. The [X] judgment creditor [ ] assignee of record applies for an abstract of judgment and represents the following:
   a. Judgment debtor's Name and last known address
      FranciscoLopez
      310 Sand Myrtle Trl.
      Destin, Florida 32541-3429
   b. Driver's license No. and state: [ ] Unknown
   c. Social security No.: [ ] Unknown
   d. Summons or notice of entry of sister-state judgment was personally served or mailed to *(name and address)*:
      Francis Lopez
   e. [ ] Original abstract recorded in this county:
      (1) Date:
      (2) Instrument No.:
   f. [ ] Information on additional judgment debtors is shown on page two.

Date: September 29, 2004

Timothy P. Dillon
(TYPE OR PRINT NAME)

(SIGNATURE OF APPLICANT OR ATTORNEY)

2. a. [X] I certify that the following is a true and correct abstract of the judgment entered in this action.
   b. [ ] A certified copy of the judgment is attached.
3. Judgment creditor *(name and address)*:
   Alan Stanly
   1569 Berkshire Court, San Marcos, CA, 92069
4. Judgment debtor *(full name as it appears in judgment)*:
   FranciscoLopez
5. a. Judgment entered on *(date)*: September 20, 2004
   b. Renewal entered on *(date)*:
6. Total amount of judgment as entered or last renewed:
   $ 50,000.00
7. [ ] An [ ] execution lien [ ] attachment lien is endorsed on the judgment as follows:
   a. Amount: $
   b. In favor of *(name and address)*:
8. A stay of enforcement has
   a. [X] not been ordered by the court.
   b. [ ] been ordered by the court effective until *(date)*:
9. [ ] This judgment is an installment judgment.

[SEAL]
SUPERIOR COURT COUNTY OF SAN DIEGO STATE OF CALIFORNIA NORTH COUNTY DIVISION

This abstract issued on *(date)*: SEP 30 2004

Clerk, by ______________, Deputy
T. ROBERTS

PLAINTIFF: Union Bank of California, N.A.	CASE NUMBER:
DEFENDANT: Alan Stanly and Francis Lopez	GIN 030827

INFORMATION ON ADDITIONAL JUDGMENT DEBTORS

10. Name and last known address

Driver's license No. & state: ☐ Unknown
Social security No.: ☐ Unknown
Summons was personally served at or mailed to *(address):*

14. Name and last known address

Driver's license No. & state: ☐ Unknown
Social security No.: ☐ Unknown
Summons was personally served at or mailed to *(address):*

11. Name and last known address

Driver's license No. & state: ☐ Unknown
Social security No.: ☐ Unknown
Summons was personally served at or mailed to *(address):*

15. Name and last known address

Driver's license No. & state: ☐ Unknown
Social security No.: ☐ Unknown
Summons was personally served at or mailed to *(address):*

12. Name and last known address

Driver's license No. & state: ☐ Unknown
Social security No.: ☐ Unknown
Summons was personally served at or mailed to *(address):*

16. Name and last known address

Driver's license No. & state: ☐ Unknown
Social security No.: ☐ Unknown
Summons was personally served at or mailed to *(address):*

13. Name and last known address

Driver's license No. & state: ☐ Unknown
Social security No.: ☐ Unknown
Summons was personally served at or mailed to *(address):*

17. Name and last known address

Driver's license No. & state: ☐ Unknown
Social security No.: ☐ Unknown
Summons was personally served at or mailed to *(address):*

18. ☐ Continued on Attachment 18.

DOCKET NUMBER 56-4

L. Scott Keehn (SBN 61691)
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Telephone: (619) 232-1700

Attorneys for **Petitioning Creditors**

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **DECLARATION OF LESLIE F. KEEHN IN SUPPORT OF PETITIONING CREDITORS' MOTION FOR SUMMARY JUDGMENT (BIFURCATED PHASE - 1)** Date: June 26, 2006 Time: 2:00 p.m. Judge: The Honorable Peter W. Bowie Ctrm: 4

I, LESLIE F. KEEHN, declare:

1. I am an attorney duly admitted to practice before the Courts of this State, and am an attorney with the firm Robbins & Keehn, APC, counsel of record for the petitioning creditors herein. I have first-hand, personal knowledge of all the following facts.

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2. On or about March 28, 2006, I learned from petitioning creditor Alan Stanly that alleged debtor Francis J. Lopez ("Lopez") had listed for sale his only known significant asset – residential real property commonly known as 310 Sand Myrtle Trail, Destin, Florida 32541 (the "Florida Property"). I personally reviewed the Florida Property listing as it appeared on the "Post A House" website on the Internet.[1] From the Internet listing, I learned that the Florida Property had been listed for sale on February 22, 2006 at a sale price of $1,295,000. A true and correct copy of that Internet listing of the Florida Property is attached hereto as Exhibit A.

3. In the course of my work on this case, I personally researched existing encumbrances against the Florida Property by visiting the official website of the Clerk of Circuit Court, 1st Judicial Circuit for Okaloosa County, Florida ("County Clerk's Site").[2] The County Clerk's Site maintains a searchable database of all recorded documents pertaining to real property in Okaloosa County, Florida.[3] I personally searched that database for any documents which may have been recorded pertaining to the Florida Property. As a result of that search, I discovered, downloaded and personally reviewed a document entitled "FLORIDA HOME EQUITY LINE OF CREDIT MORTGAGE (Securing Future Advances)" which had been recorded against the Florida Property on May 13, 2005 (the "Home Equity Line"). The Home Equity Line is in the amount of $125,000, and provides that "the mortgagor is FRANCIS LOPEZ and MADELINE LOPEZ, HUSBAND and WIFE." A true and correct copy of the Home Equity Line document which I downloaded and printed directly from the County Clerk's Site is attached hereto as Exhibit B.

4. As a further result of my search of the County Clerk's Site, I discovered, downloaded and personally reviewed a document entitled "MORTGAGE" which had been recorded against the Florida Property on November 10, 2004, and memorialized a $750,000 loan provided by Lender Lehman Brothers Bank (the "Lehman Bros. Bank Mortgage"). A true and correct copy of the Lehman Bros. Bank Mortgage document which I downloaded and printed

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[1] <http://www.postahouse.com/> (as of May 29, 2006).

[2] <http://www.clerkofcourts.cc/> (as of May 29, 2006).

[3] <http://officialrecords.clerkofcourts.cc/oncoreweb/Search.aspx> (as of May 29, 2006).

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directly from the County Clerk's Site is attached hereto as Exhibit C.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on May 29, 2006, at San Diego, California.

LESLIE F. KEEHN

ROBBINS & KEEHN, APC
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EXHIBIT A

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Contact Information:

House Owner: camille collins
Phone: 850 650 7293
Contact This Owner

Home Information:

Address: 310 Sand Myrtle Trail
City: Destin **State:** Florida **Zip:** 32541

Description: A stunning custom home with all the features a family needs. It has a lovely foyer with an alabaster chandelier, gourmet kitchen, home office, and too many extras to list.A quality home, and the best value in Kelly Plantation, the most prestigious gated community in Destin.
Tell a Friend **Map Direction**

Image Not Available

Image Not Available

closer look closer look closer look closer look

Date Post: 2/22/2006 10:25:56 AM **Price:** $1,295,000.00

Beds: 5 **Baths:** 3.5 **Garage:** 2 **Sq feet:** 4000 - 5000 **Years built:** 1997

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EXHIBIT B

FILE # 2222739 RCD: 05/1[redacted]005 @ 11:50 AM, BK: 2617 PG: [redacted]24 RECORDING: $46.50 RECORDING ARTIC[redacted]V: $40.00 MTG DOCSTGAMPS: [redacted]37.50 INTANGIBLE TAX $250.00 DEPUTY CLERK PDUNN DON W. HOWARD, CLERK OF COURTS, OKALOOSA COUNTY FL

86.50

This instrument prepared by and return to:
AMERICAN HOME EQUITY CORPORATION
167 TECHNOLOGY DRIVE
IRVINE, CALIFORNIA 92618
Prepared by: MARISA ALCALA

Parcel Identification No.: 00-2S-22-1356-0001-0050

Space Above This Line For Recording Data

FLORIDA
HOME EQUITY LINE OF CREDIT MORTGAGE
(Securing Future Advances)

Loan Number: 3505031401

THIS MORTGAGE is made on **MAY 2, 2005.** The mortgagor is **FRANCIS LOPEZ and MADELINE LOPEZ, HUSBAND And WIFE.**

This Mortgage is given to **AMERICAN HOME EQUITY CORPORATION,** whose address is **167 TECHNOLOGY DRIVE, IRVINE, CALIFORNIA 92618** ("Lender"). In this Mortgage, the terms "you," "your" and "yours" refer to the mortgagor(s). The terms "we," "us" and "our" refer to the Lender.

Pursuant to a Home Equity Line of Credit Agreement dated the same date as this Mortgage ("Agreement"), you may incur maximum unpaid loan indebtedness (exclusive of interest thereon) in amounts fluctuating from time to time up to the maximum principal sum outstanding at any time of **ONE HUNDRED TWENTY-FIVE THOUSAND AND 00/100ths** Dollars (**U.S. $125,000.00**). The Agreement provides for a final scheduled installment due and payable not later than on **MAY 6, 2020.** You agree that this Mortgage shall continue to secure all sums now or hereafter advanced under the terms of the Agreement including, without limitation, such sums that are advanced by us whether or not at the time the sums are advanced there is any principal sum outstanding under the Agreement. The parties hereto intend that this Mortgage shall secure unpaid balances, and all other amounts due to us hereunder and under the Agreement.

This Mortgage secures to us: (a) the repayment of the debt evidenced by the Agreement, with interest, and all refinancings, renewals, extensions and modifications of the Agreement; (b) the payment of all other sums, with interest, advanced under this Mortgage to protect the security of this Mortgage; and (c) the performance of your covenants and agreements under this Mortgage and the Agreement. For this purpose and in consideration of the debt, you do hereby mortgage, grant and convey to us and our successors and assigns, the following described property located in **OKALOOSA** County, Florida:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES

Borrower Initials MC f

which has the address of 310 SAND MYRTLE TRAIL
DESTIN, Florida 32541 ("Property Address").

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Mortgage. All of the foregoing is referred to in this Mortgage as the "Property."

YOU COVENANT that you are lawfully seized of the estate hereby conveyed and have the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. You warrant and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

YOU AND WE covenant and agree as follows:

1. **Payment of Principal, Interest and Other Charges.** You shall pay when due the principal of and interest owing under the Agreement and all other charges due hereunder and due under the Agreement.

2. **Application of Payments.** Unless applicable law provides otherwise, all payments received by us under the Agreement and Section 1 shall be applied by us as provided in the Agreement.

3. **Prior Mortgages; Charges; Liens.** You shall perform all of your obligations under any mortgage, deed of trust or other security instruments with a lien which has priority over this Mortgage, including your covenants to make payments when due. You shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Mortgage, and leasehold payments or ground rents, if any. Upon our request, you shall promptly furnish to us all notices of amounts to be paid under this section and receipts evidencing any such payments you make directly. You shall promptly discharge any lien (other than a lien disclosed to us in your application or in any title report we obtained) which has priority over this Mortgage.

We specifically reserve to ourself and our successors and assigns the unilateral right to require, upon notice, that you pay to us on the day monthly payments are due an amount equal to one-twelfth (1/12) of the yearly taxes, and assessments (including condominium and planned unit development assessments, if any) which may attain priority over this Mortgage and ground rents on the Property, if any, plus one-twelfth (1/12) of yearly premium installments for hazard and mortgage insurance, all as we reasonably estimate initially and from time to time, as allowed by and in accordance with applicable law.

Borrower Initials ML ____

4. **Hazard Insurance.** You shall keep the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which we require insurance. This insurance shall be maintained in the amounts and for the periods that we require. You may choose any insurer reasonably acceptable to us. Insurance policies and renewals shall be acceptable to us and shall include a standard mortgagee clause. If we require, you shall promptly give us all receipts of paid premiums and renewal notices. If you fail to maintain coverage as required in this section, you authorize us to obtain such coverage as we in our sole discretion determine appropriate to protect our interest in the Property in accordance with the provisions in Section 6. You understand and agree that any coverage we purchase may cover only our interest in the Property and may not cover your interest in the Property or any personal property therein. You also understand and agree that the premium for any such insurance may be higher than the premium you would pay for such insurance. You shall promptly notify the insurer and us of any loss. We may make proof of loss if you do not promptly do so.

We may also, at our option and on your behalf, adjust and compromise any claims under the insurance, give releases or acquittances to the insurance company in connection with the settlement of any claim and collect and receive insurance proceeds. You appoint us as your attorney-in-fact to do all of the foregoing, which appointment you understand and agree is irrevocable, coupled with an interest with full power of substitution and shall not be affected by your subsequent disability or incompetence.

Insurance proceeds shall be applied to restore or repair the Property damaged, if restoration or repair is economically feasible and our security would not be lessened. Otherwise, insurance proceeds shall be applied to sums secured by this Mortgage, whether or not then due, with any excess paid to you. If you abandon the Property, or do not answer within 30 days our notice to you that the insurer has offered to settle a claim, then we may collect and use the proceeds to repair or restore the Property or to pay sums secured by this Mortgage, whether or not then due. The 30-day period will begin when notice is given. Any application of proceeds to principal shall not require us to extend or postpone the due date of monthly payments or change the amount of monthly payments. If we acquire the Property at a forced sale following your default, your right to any insurance proceeds resulting from damage to the Property prior to the acquisition shall pass to us to the extent of the sums secured by this Mortgage immediately prior to the acquisition.

You shall not permit any condition to exist on the Property which would, in any way, invalidate the insurance coverage on the Property.

5. **Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** You shall not destroy, damage or substantially change the Property, allow the Property to deteriorate, or commit waste. You shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in our good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Mortgage or our security interest. You may cure such a default, as provided in Section 17, by causing the action or proceeding to be dismissed with a ruling that, in our good faith determination, precludes forfeiture of your interest in the Property or other material impairment of the lien created by this Mortgage or our security interest. You shall also be in default if you, during the loan application process, gave materially false or inaccurate information or statements to us (or failed to provide us with any material information) in connection with the loan evidenced by the Agreement, including, but not limited to, representations concerning your occupancy of the Property as a principal residence. If this Mortgage is on a leasehold, you shall comply with the lease. If you acquire fee title to the Property, the leasehold and fee title shall not merge unless we agree to the merger in writing.

Borrower Initials mc h

6. **Protection of Our Rights in the Property; Mortgage Insurance.** If you fail to perform the covenants and agreements contained in this Mortgage, or there is a legal proceeding that may significantly affect our rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then we may do, and pay for, anything necessary to protect the Property's value and our rights in the Property. Our actions may include paying any sums secured by a lien which has priority over this Mortgage or any advance under the Agreement or this Mortgage, appearing in court, paying reasonable attorneys' fees, paying any sums which you are required to pay under this Mortgage and entering on the Property to make repairs. We do not have to take any action we are permitted to take under this section. Any amounts we pay under this section shall become additional debts you owe us and shall be secured by this Mortgage. These amounts shall bear interest from the disbursement date at the rate established under the Agreement and shall be payable, with interest, upon our request. If we required mortgage insurance as a condition of making the loan secured by this Mortgage, you shall pay the premiums for such insurance until such time as the requirement for the insurance terminates.

7. **Inspection.** We may enter and inspect the Property at any reasonable time and upon reasonable notice.

8. **Condemnation.** The proceeds of any award for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to us. If the Property is abandoned, or if, after notice by us to you that the condemnor offers to make an award or settle a claim for damages, you fail to respond to us within 30 days after the date the notice is given, we are authorized to collect and apply the proceeds, at our option, either to restoration or repair of the Property or to the sums secured by this Mortgage, whether or not then due. Unless we and you otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments payable under the Agreement and Section 1 or change the amount of such payments.

9. **You Are Not Released; Forbearance by Us Not a Waiver.** Extension of time for payment or modification of amortization of the sums secured by this Mortgage granted by us to any of your successors in interest shall not operate to release your liability or the liability of your successors in interest. We shall not be required to commence proceedings against any successor in interest, refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by you or your successors in interest. Our forbearance in exercising any right or remedy shall not waive or preclude the exercise of any right or remedy.

10. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Mortgage shall bind and benefit your successors and permitted assigns. Your covenants and agreements shall be joint and several. Anyone who co-signs this Mortgage but does not execute the Agreement: (a) is co-signing this Mortgage only to mortgage, grant and convey such person's interest in the Property; (b) is not personally obligated to pay the Agreement, but is obligated to pay all other sums secured by this Mortgage; and (c) agrees that we and anyone else who signs this Mortgage may agree to extend, modify, forbear or make any accommodations regarding the terms of this Mortgage or the Agreement without such person's consent.

11. **Loan Charges.** If the loan secured by this Mortgage is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from you which exceed permitted limits will be refunded to you. We may choose to make this refund by reducing the principal owed under the Agreement or by making a direct payment to you. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Agreement.

Borrower Initials ML ______ E ______

12. **Notices.** Unless otherwise required by law, any notice to you provided for in this Mortgage shall be delivered or mailed by first class mail to the Property Address or any other address you designate by notice to us. Unless otherwise required by law, any notice to us shall be given by first class mail to our address stated above or any other address we designate by notice to you. Any notice provided for in this Mortgage shall be deemed to have been given to you or us when given as provided in this section.

13. **Governing Law; Severability.** The interpretation and enforcement of this Mortgage shall be governed by the law of the jurisdiction in which the Property is located, except as preempted by federal law. In the event that any provision or clause of this Mortgage or the Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Agreement which can be given effect without the conflicting provision. To this end the provisions of this Mortgage and the Agreement are declared to be severable.

14. **Transfer of the Property.** If all or any part of the Property or any interest in it is sold or transferred without our prior written consent, we may, at our option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by us if exercise is prohibited by federal law as of the date of this Mortgage.

15. **Sale of Agreement; Change of Loan Servicer.** The Agreement or a partial interest in the Agreement (together with this Mortgage) may be sold one or more times without prior notice to you. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Agreement and this Mortgage. There also may be one or more changes of the Loan Servicer unrelated to the sale of the Agreement. If there is a change of the Loan Servicer, you will be given written notice of the change as required by applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any information required by applicable law.

16. **Hazardous Substances.** You shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. You shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of Hazardous Substances in quantities that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property. You shall promptly give us written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which you have actual knowledge. If you learn or are notified by any government or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, you shall promptly take all necessary remedial actions in accordance with Environmental Law. As used in this Mortgage, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Mortgage, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

17. **Acceleration; Remedies. You will be in default if (1) any payment required by the Agreement or this Mortgage is not made when it is due; (2) we discover that you have committed fraud or made a material misrepresentation in connection with the Agreement; or (3) you take any action or fail to take any action that adversely affects our security for the Agreement or any right we have in the Property. If a default occurs (other than under Section 14 hereof, unless applicable law provides otherwise), we will give you notice specifying: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to you, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding and sale of the Property. The notice**

Borrower Initials ML FL

shall further inform you of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the nonexistence of a default or any other defense you may have to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, we, at our option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. We shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, reasonable attorneys' fees as permitted by applicable law, but not to exceed 20% of the amount decreed for principal and interest (which fees shall be allowed and paid as part of the decree of judgment) and costs of documentary evidence, abstracts and title reports.

18. **Discontinuance of Enforcement.** Notwithstanding our acceleration of the sums secured by this Mortgage under the provisions of Section 17, we may, in our sole discretion and upon such conditions as we in our sole discretion determine, discontinue any proceedings begun to enforce the terms of this Mortgage.

19. **Release.** This Mortgage secures future advances made pursuant to the Agreement, regardless of whether at the time any such advance is made there is any outstanding indebtedness under the Agreement. Thus, you may obtain future advances pursuant to the Agreement, even though all prior indebtedness has been paid in full. At any time when all sums secured by this Mortgage have been paid in full, we will release this Mortgage at your request. You will be responsible for all costs of recording such release.

20. **Additional Charges.** You agree to pay reasonable charges as allowed by law in connection with the servicing of this loan including, without limitation, the costs of obtaining tax searches and subordinations. Provided, however, that nothing contained in this section is intended to create and shall not be construed to create any duty or obligation by us to perform any such act, or to execute or consent to any such transaction or matter, except a release of the Mortgage upon full repayment of all sums secured thereby.

21. **Documentary Stamp Taxes and Intangible Taxes.** You agree to pay any and all present and future documentary stamp taxes and non-recurring intangible taxes with respect to this Mortgage and the Agreement. You shall indemnify and hold us harmless from and against any and all loss, liability, claim, deficiency or expense, including, without limitation, interest, penalties and legal fees, which we may have heretofore or hereafter incurred in connection with any and all present and future documentary stamp taxes and non-recurring intangible taxes with respect to this Mortgage and the Agreement.

22. **Waiver.** No waiver by us at any time of any term, provision or covenant contained in this Mortgage or in the Agreement secured hereby shall be deemed to be or construed as a waiver of any other term, provision or covenant or of the same term, provision or covenant at any other time.

23. **Riders to this Mortgage.** If one or more riders are executed by you and recorded together with this Mortgage, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Mortgage as if the rider(s) were part of this Mortgage.

[ ] Condominium Rider	[ ] 1-4 Family Rider	[ ] Second Home Rider
[X] Planned Unit Development Rider	[ ] Other(s) (specify)	

Borrower Initials mc [initials]

IN WITNESS WHEREOF, you have hereunto set your hand and seal the day and year first above written.

Witnesses:	Mortgagor(s):
Stephanie A. Albright	FRANCIS LOPEZ (Seal)
Brandy S. Prince	MADELINE LOPEZ (Seal)
	(Seal)
	(Seal)
	(Seal)
	(Seal)

ACKNOWLEDGMENTS

STATE OF FLORIDA, **OKALOOSA** County, ss:

The foregoing instrument was acknowledged before me this ~~2ND~~ 3rd day of **MAY, 2005**, by **FRANCIS LOPEZ and MADELINE LOPEZ , HUSBAND And WIFE** who is personally known to me (yes/no) or who provided Drivers License as identification.

CINDY L. SHUCK
NOTARY PUBLIC - STATE OF FLORIDA
My Commission Expires Sept. 16, 2005
Comm. No. DD 057006

Print Name: Cindy L. Shuck
Notary Public

My Commission expires:

Exhibit A

Lot 5, BLock I, of Kelly Plantation Phase II, according to the Plat thereof, as recorded in Plat Book 15, Page(s) 59-60, of the Public Records of Okaloosa County, Florida.

Parcel Identification Number: 00-2S-22-1356-0001-0050

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Loan Number 3505031401

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this **2ND** day of **MAY, 2005,** and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Home Equity Line of Credit Agreement and Disclosure Statement (the "Note") to **AMERICAN HOME EQUITY CORPORATION** (the "Lender") of the same date and covering the Property described in the Security Instrument located at:

310 SAND MYRTLE TRAIL, DESTIN, FLORIDA 32541

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

COVENANTS, CONDITIONS, And RESTRICTIONS OF RECORD

(the "Declaration"). The Property is a part of a planned unit development known as

KELLY PLANTATION

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the Homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD OBLIGATIONS. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the: (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. PROPERTY INSURANCE. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then Borrower's obligation under Section 4 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to the Borrower are hereby assigned and shall be paid to the Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

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C. **PUBLIC LIABILITY INSURANCE.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. **CONDEMNATION.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 8.

E. **LENDER'S PRIOR CONSENT.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to:

(i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender;

(iii) termination of professional management and assumption of self-management of the Owners Association; or

(iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. **REMEDIES.** If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

_________________________(Seal)
FRANCIS LOPEZ

_________________________(Seal)
MADELINE LOPEZ

EXHIBIT C

FILE # 2170830 RCD: 11/1[redacted]004 @ 01:29 PM, BK: 2574 PG: [redacted]6 RECORDING: $123.00 RECORDING ARTI[redacted] V: $108.00 MTG DOCSTGAMPS:[redacted]2625.00 INTANGIBLE TAX $1500.00 DEPUTY CLERK PDUNN KATHRYN W. HENLEY, CLERK OF COURTS, OKALOOSA COUNTY

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Return To: AURORA LOAN SERVICES INC.
3040 Route 22 West
Branchburg, NJ, 08876

Rec 231.00
doc. 2625.00
int 1500.00

This document was prepared by:
ROSE HAHN
LEHMAN BROTHERS BANK
400 PROFESSIONAL DRIVE, SUITE 100
GAITHERSBURG, MD 20879

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MORTGAGE

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DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated November 2, 2004, together with all Riders to this document.

(B) "Borrower" is MADELEINE J LOPEZ, whose husband, Francis Lopez, is not a borrower but joins in the execution of this mortgage for the purposes of relinquishing and waiving any and all spousal or homestead interests and rights to the real property being mortgaged.

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is LEHMAN BROTHERS BANK, FSB, A FEDERAL SAVINGS BANK

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Lender is a LEHMAN BROTHERS BANK, FSB , A FEDERAL SAVINGS BANK
organized and existing under the laws of UNITED STATES .
Lender's address is
400 PROFESSIONAL DRIVE, SUITE 500 , GAITHERSBURG, MD 20879.

(E) "Note" means the promissory note signed by Borrower and dated November 2, 2004 .
The Note states that Borrower owes Lender
SEVEN HUNDRED FIFTY THOUSAND & 00/100 Dollars
(U.S. $ 750,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than December 1, 2034 .

(F) **"Property"** means the property that is described below under the heading "Transfer of Rights in the Property."

(G) **"Loan"** means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) **"Riders"** means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

[X] Adjustable Rate Rider	[ ] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[X] Planned Unit Development Rider	[ ] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[X] Other(s) [specify] PREPAY/

(I) **"Applicable Law"** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) **"Community Association Dues, Fees, and Assessments"** means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) **"Electronic Funds Transfer"** means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) **"Escrow Items"** means those items that are described in Section 3.

(M) **"Miscellaneous Proceeds"** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) **"Mortgage Insurance"** means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) **"Periodic Payment"** means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

Initials: ML [signature]

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(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the County [Type of Recording Jurisdiction] of Okaloosa [Name of Recording Jurisdiction]:

All that tract or parcel of land as shown on Schedule "A" attached hereto which is incorporated herein and made a part hereof.

Parcel ID Number: which currently has the address of
310 SAND MYRTLE TRAIL [Street]
DESTIN [City], Florida 32541 [Zip Code]
("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

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BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in

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full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard

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or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise

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agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of

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disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

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11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender

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to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument

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shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument,

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and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental

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Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Attorneys' Fees. As used in this Security Instrument and the Note, attorneys' fees shall include those awarded by an appellate court and any attorneys' fees incurred in a bankruptcy proceeding.

25. Jury Trial Waiver. The Borrower hereby waives any right to a trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Security Instrument or the Note.

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

MADELEINE J LOPEZ (Seal) -Borrower

(Address)

(Seal) -Borrower

(Address)

(Seal) -Borrower

(Address)

(Seal) -Borrower

(Address)

(Seal) -Borrower

(Address)

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(Address)

(Seal) -Borrower

(Address)

(Seal) -Borrower

(Address)

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STATE OF FLORIDA, **County ss:**

The foregoing instrument was acknowledged before me this Nov 2, 2004 by Frances & Madeline Lopez

who is personally known to me or who has produced Fl. Drivers License as identification.

Lisa M. Ward
My Commission DD196599
Expires March 31, 2007

Notary Public

Exhibit A

Lot 5, Block I of Kelly Plantation Phase II, according to the plat thereof as recorded in plat book 15, pages 59-60, of the public records of Okaloosa County, Florida.

Parcel Identification Number: 002S221356000I0050

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ADJUSTABLE RATE RIDER

(LIBOR Six-Month Index (As Published In *The Wall Street Journal*) - Rate Caps)

THIS ADJUSTABLE RATE RIDER is made this 2nd day of November, 2004, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to
LEHMAN BROTHERS BANK, FSB

("Lender") of the same date and covering the property described in the Security Instrument and located at:
310 SAND MYRTLE TRAIL, DESTIN, FLORIDA 32541

[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 5.875 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of December, 2009, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

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(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND 25 HUNDREDTHS percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.875 % or less than 2.250 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than TWO percentage points (2.000 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 11.875 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

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B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER
Uniform Covenant 18 of the Security Instrument is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

MADELEINE J LOPEZ (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

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ADDENDUM TO ADJUSTABLE RATE RIDER

This addendum is made November 2 , 2004 and is incorporated into and deemed to amend and supplement the Adjustable Rate Rider of the same date.

The property covered by this addendum is described in the Security Instrument and located at:
310 SAND MYRTLE TRAIL , DESTIN , FLORIDA 32541

AMENDED PROVISIONS

In addition to the provisions and agreements made in the Security Instrument, I/we further covenant and agree as follows:

ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.875% or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than TWO percentage point(s) (2.000 %) from the rate of interest I have been paying for the preceding six (6) months. My interest rate will never be greater than 11.875 %. My interest rate will never be less than 2.250 %.

TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

In Witness Thereof, Trustor has executed this addendum.

[signature]
Witness

11-2-04
Date

[signature]
MADELEINE J LOPEZ

[signature]

Date

Date

Date

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INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER

LOAN NUMBER: 0019275023

PROPERTY ADDRESS: 310 SAND MYRTLE TRAIL
DESTIN, FLORIDA 32541

THIS ADDENDUM is made this 2nd day of November , 2004 and is incorporated into and intended to form a part of the Adjustable Rate Rider (the "Rider") dated the same date as this Addendum executed by the undersigned and payable to
LEHMAN BROTHERS BANK, FSB, 400 PROFESSIONAL DRIVE, SUITE 500, GAITHERSBURG, MD 20879 (the Lender).

THIS ADDENDUM supersedes Section 4(C) of the Rider. None of the other provisions of the Note are changed by this Addendum.

4. **INTEREST RATE AND MONTHLY PAYMENT CHANGES**

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding 2.25 percentage point(s) (2.25 %) to the Current Index for such Change Date. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D), this rounded amount will be my new interest rate until the next Change Date.

During the Interest-Only Period, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay accrued interest. This will be the amount of my monthly payment until the earlier of the next Change Date or the end of the Interest-Only Period unless I make a voluntary prepayment of principal during such period. If I make a voluntary prepayment of principal during the Interest-Only Period, my payment amount for subsequent payments will be reduced to the amount necessary to pay interest at the then current interest rate on the lower principal balance. At the end of the Interest-Only Period and on each Change Date thereafter, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay in full the unpaid principal that I am expected to owe at the end of the Interest-Only Period or Change Date, as applicable, in equal monthly payments over the remaining term of the Note. The result of this calculation will be the new amount of my monthly payment. After the end of the Interest-Only Period, my payment amount will not be reduced due to voluntary prepayments.

Dated: 11-2-04

MADELEINE J LOPEZ

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PREPAYMENT RIDER
(Multi-state)

This Prepayment Rider is made this 2nd day of November, 2004 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note (the "Note") to LEHMAN BROTHERS BANK, FSB (the "Lender") of the same date and covering the property described in the Security Instrument and located at 310 SAND MYRTLE TRAIL DESTIN, FLORIDA 32541 (the "Property").

Additional Covenants. Notwithstanding anything to the contrary set forth in the Note or Security Instrument, Borrower and Lender further covenant and agree as follows:

Borrower has the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." A "full prepayment" is the prepayment of the entire unpaid principal due under the Note. A payment of only part of the unpaid principal is known as a "partial prepayment."

If, within the 5 -year period beginning with the date Borrower executes the Note (the "Penalty Period"), Borrower makes a full prepayment, or partial prepayment in any twelve (12)-month period that exceeds 20% of the original principal loan amount, Borrower will pay a prepayment charge as consideration for the Note Holder's acceptance of such prepayment. The prepayment charge will equal the amount of interest that would accrue during a six (6)-month period on the amount prepaid that exceeds 20% of the original principal balance of the Note, calculated at the rate of interest in effect under the terms of the Note at the time of the prepayment, unless otherwise prohibited by applicable law or regulation. No prepayment charge will be assessed for any prepayment occurring after the Penalty Period.

Notwithstanding the foregoing, in the event of a full prepayment concurrent with a bona fide sale of the Property to an unrelated third party after the first 0 year(s) of the term of the Note, no prepayment penalty will be assessed. In that event, Borrower agrees to provide the Note Holder with evidence acceptable to the Note Holder of such sale.

By signing below, Borrower accepts and agrees to the terms and covenants contained in this Prepayment Rider.

_______________(Seal) Borrower MADELEINE J LOPEZ

_______________(Seal) Borrower

_______________(Seal) Borrower

_______________(Seal) Borrower

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PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 2nd day of November, 2004, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to

LEHMAN BROTHERS BANK, FSB, A FEDERAL SAVINGS BANK (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

310 SAND MYRTLE TRAIL, DESTIN, FLORIDA 32541

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

(the "Declaration"). The Property is a part of a planned unit development known as

KELLY PLANTATION [Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

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B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

_____________________ (Seal) -Borrower
MADELEINE J LOPEZ

_____________________ (Seal) -Borrower

_____________________ (Seal) -Borrower

_____________________ (Seal) -Borrower

_____________________ (Seal) -Borrower

_____________________ (Seal) -Borrower

_____________________ (Seal) -Borrower

_____________________ (Seal) -Borrower

DOCKET NUMBER 57

L. Scott Keehn (SBN 61691)
ROBBINS & KEEHN
A Professional Corporation
530 "B" Street, Suite 2400
San Diego, California 92101
Telephone: (619) 232-1700

Attorneys for **Petitioning Creditors**

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re:

FRANCIS J. LOPEZ,

Alleged Debtor

Case No. 05-05926-PBINV

Involuntary Chapter 7

DECLARATION OF L. SCOTT KEEHN IN SUPPORT OF PETITIONING CREDITORS' MOTION FOR SUMMARY JUDGMENT (BIFURCATED PHASE - 1)

Date: June 26, 2006
Time: 2:00 p.m.
Judge: The Honorable Peter W. Bowie
Ctrm: 4

I, L. SCOTT KEEHN, declare as follows:

1. I am an attorney duly admitted to practice before the Courts of this State, and before the United States District Court for the Southern District of California. I am a shareholder of the firm Robbins & Keehn, APC, counsel of record for the petitioning creditors herein. I am the shareholder in charge of the engagement of the firm on behalf of the petitioning creditors herein, and the attorney within the firm who is most knowledgeable with respect to all aspects of this matter.

2. On April 27, 2006, I conducted the deposition of Francis J. Lopez – the alleged debtor herein – in Shalimar, Florida. I was personally present throughout the deposition, I know the questions that were asked and the answers given. Attached hereto marked **Exhibit A** and

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SAN DIEGO, CALIFORNIA 92101
TELEPHONE (619) 232-1700 · TELECOPIER (619) 544-9095

incorporated herein by this reference is a true and correct copy of the **court reporter's transcript** for that deposition (the "Lopez Depo").

3. Attached hereto marked **Exhibit B** and incorporated herein by this reference are true and correct copies of the exhibits that were marked at, and made a part of, the deposition of Francis J. Lopez ("Depo Exhibits").

4. During the course of the firm's engagement in this matter, I caused a documents subpoena to be served upon the custodian of records for **Allstate Floridian Indemnity Company**, an entity identified as a creditor on the debtor's creditors list. Attached hereto marked **Exhibit C** and incorporated herein by this reference are true and correct copies of documents that were produced by Allstate in response to the subpoena.

5. During the course of the firm's engagement in this matter, I caused a documents subpoena to be served upon the custodian of records for **American Express Cards**, an entity identified as a creditor on the debtor's creditors list. Attached hereto marked **Exhibit D** and incorporated herein by this reference are true and correct copies of documents that were produced by American Express Cards in response to the subpoena.

6. During the course of the firm's engagement in this matter, I caused a documents subpoena to be served upon the custodian of records for **American Home Shield**, an entity identified as a creditor on the debtor's creditors list. Attached hereto marked **Exhibit E** and incorporated herein by this reference are true and correct copies of documents that were produced by American Home Shield in response to the subpoena.

7. During the course of the firm's engagement in this matter, I caused a documents subpoena to be served upon the custodian of records for **Bank of America**, an entity identified as a creditor on the debtor's creditors list. Attached hereto marked **Exhibit F** and incorporated herein by this reference are true and correct copies of documents that were produced by Bank of America in response to the subpoena.

8. During the course of the firm's engagement in this matter, I caused a documents subpoena to be served upon the custodian of records for **Citibank.** Debtor identifies what purport to be two entities as creditors on the debtor's creditors list (Citibank Card and Quicken Platinum

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Select) — both are divisions of the same entity (Citibank (South Dakota) N.A.). Attached hereto marked **Exhibit G** and incorporated herein by this reference are true and correct copies of documents that were produced by **Citibank (South Dakota) N.A.** in response to the documents subpoena. The documents produced are responsive to both of the accounts identified on the debtor's creditors list.

9. During the course of the firm's engagement in this matter, I caused a documents subpoena to be served upon the custodian of records for **Coastal Community Insurance Agency**, an entity identified as a creditor on the debtor's creditors list. Attached hereto marked **Exhibit H** and incorporated herein by this reference are true and correct copies of documents that were produced by Coastal Community Insurance in response to the subpoena.

10. During the course of the firm's engagement in this matter, I caused a documents subpoena to be served upon the custodian of records for **Household Bank/HSBC**, an entity identified as a creditor on the debtor's creditors list. Attached hereto marked **Exhibit I** and incorporated herein by this reference are true and correct copies of documents that were produced by Household Bank in response to the subpoena.

11. During the course of the firm's engagement in this matter, I caused a documents subpoena to be served upon the custodian of records for **Kelly Plantation Owners' Association**, an entity identified as a creditor on the debtor's creditors list. Attached hereto marked **Exhibit J** and incorporated herein by this reference are true copies of: (a) the documents subpoena (pages 1-4); (b) the "UPS Next Day Airbill" for the package in which the documents responsive to the subpoena were served (page 5); and (c) documents produced in response to the subpoena (pages 6-7). The handwritten statement on page 7 was on the documents at the time they were produced.

12. During the course of the firm's engagement in this matter, I caused a documents subpoena to be served upon the custodian of records for **Okaloosa Gas District**, an entity identified as a creditor on the debtor's creditors list. Attached hereto marked **Exhibit K** and incorporated herein by this reference are true and correct copies of documents that were produced on behalf of Okaloosa Gas District, through its outside counsel, in response to the subpoena.

13. During the course of the firm's engagement in this matter, I caused a documents

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subpoena to be served upon the custodian of records for **Valley Forge Life Insurance Company,** an entity identified as a creditor on the debtor's creditors list. Attached hereto marked **Exhibit L** and incorporated herein by this reference are true and correct copies of documents that were produced by Valley Forge Life Insurance Company in response to the subpoena.

14. On April 28, 2006, I attended, as an observer, the **deposition of Madeleine Lopez,** conducted in an action pending before the Superior Court for the State of California, County of San Diego, entitled *Enterprise Technology Alliance, Inc. v. Madeleine Lopez*, case number GIC851324. The deposition was conducted in Shalimar, Florida. I was in attendance throughout the deposition of Madeleine Lopez and heard all of the questions that were asked, and the answers that were given. Attached hereto marked **Exhibit M** and incorporated herein by this reference are excerpts from the court reporter's transcript of the deposition of Madeleine Lopez.

15. During the course of the firm's engagement in this matter, I caused a documents subpoena to be served upon the custodian of records of **Compass Bank** — a banking institution having at least one branch in the State of Florida, and an institution known to the firm to be a banking institution utilized by Francis J. Lopez. Attached hereto marked **Exhibit N** and incorporated herein by this reference are true and correct copies of documents that were produced by Compass Bank in response to that subpoena.

16. I have firsthand knowledge of all of the foregoing, and if called as a witness, could and would, testify in the manner hereinabove set forth.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on May 29, 2006, at San Diego, California.

L. Scott Keehn

L. SCOTT KEEHN

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DOCKET NUMBER 58

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

IN RE:) Case No. 05-05926-PBINV) Involuntary Chapter 7

FRANCIS J. LOPEZ

Alleged Debtor,) Judge: The Honorable Peter W. Bowie

) Dept.: Four

ORIGINAL

CERTIFICATION OF QUESTIONS
DEPOSITION OF FRANCIS LOPEZ

I, Tracy A. Lefebvre, Court Reporter and Notary Public for the State Florida at Large, hereby certify that pursuant to agreement, the deposition of Francis Lopez was taken before me commencing at 9:00 a.m., Thursday, April 27th, 2006, at the offices of Trawick Court Reporting, 5 Clifford Drive, Shalimar, Florida, and that certain oral questions were propounded and certain answers given; and certain questions were propounded which were not answered as follows:

Beginning on page 218, line 15:
BY MR. KEEHN:

Q. Okay. What was the amount of that payment total?

A. I think I gave you a ballpark already.
Q. If you did, it was a long time ago. Can you refresh my memory?
A. Let's look back and see.
Q. No. She's not going to be able to find that, not before the sun goes down.
A. I've already answered that question.
Q. So are you declining to answer on the grounds that it's been asked and answered?
A. Yes. I've already answered.
Q. That's your objection?
A. I'm not objecting. You've already asked me that question. We spent several minutes on it, and I answered it. I gave you a ballpark of how much that was.
Q. Okay. So you're declining to answer this question?
A. Yes.
Q. Okay. I'll ask the court reporter to mark this portion of the transcript accordingly.

WITNESS MY HAND AND SEAL OF OFFICE, ~~this~~, the 27th day of April, 2006.

TRACY A. LEFEBVRE
Notary Public - State of Florida
My Commission Expires Jan. 8, 2007
Commission # DD 176214

TRACY A. LEFEBVRE, COURT REPORTER
NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires
January 8th, 2007

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

IN RE:	) Case No. 05-05926-PBINV Involuntary Chapter 7
FRANCIS J. LOPEZ	)
Alleged Debtor,	) Judge: The Honorable Peter W. Bowie
	) Dept.: Four

DEPOSITION OF FRANCIS J. LOPEZ
APRIL 27TH, 2006

The deposition of **FRANCIS J. LOPEZ**, a witness in the above-entitled cause, was taken before TRACY LEFEBVRE, Shorthand Reporter and Notary Public in and for Okaloosa County, Florida at Trawick Reporting Service, 5 Clifford Drive, Conference Room, Shalimar, Florida, on the 27th day of April, 2006, commencing at 9:00 a.m., CST, pursuant to agreement.

APPEARANCES:

ROBBINS & KEEHN, APC
2400 Union Bank Building
530 "B" Street
San Diego, California 92101
For Plaintiff, Alan Stanly
BY: **L. SCOTT KEEHN, ESQUIRE**

ALSO PRESENT: ALAN STANLY

I-N-D-E-X

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WHEREUPON,

FRANCIS LOPEZ

was called as a witness, and after having been first duly sworn to tell the truth, was deposed and testified as follows:

DIRECT EXAMINATION

BY MR. KEEHN:

Q. Good morning, Mr. Lopez.

A. Good morning.

Q. My name is Scott Keehn, and I represent the petitioning creditors in the involuntary bankruptcy proceeding which is now pending in the Southern District of California. And I'll be asking you questions this morning pertaining to that action.

A. All right.

Q. Would you state your name for the record and spell your last name.

A. Francis Lopez. And that's Francis with a C-I-S, Lopez, L-O-P-E-Z.

Q. And what is your date of birth, sir?

A. 7/7/61.

Q. And your attorney of record is Jonathan Hayes in this matter, correct?

A. That's correct.

Q. I will tell you, Mr. Lopez, that our office received an e-mail communication from Mr. Hayes yesterday indicating that you would be appearing here today without the benefit of counsel and consenting to the proceedings going forward?

A. That's correct.

Q. Okay. That's your understanding as well?

A. Absolutely.

Q. Okay, good. Can you state your current residential address?

A. 310 Sand Myrtle Trail, Destin, Florida 32541.

Q. Have you had any other residential addresses in the last six months?

A. No.

Q. Okay. Have you ever had your deposition taken before?

A. Yes, I have.

Q. On approximately how many occasions?

A. I think it's probably been probably three. Is it three? Two or three occasions.

Q. Okay. So you're familiar with the process?

A. I am familiar.

Q. You understand that your testimony here today is under oath?

A. I do.

Q. You understand that it has the same solemnity and importance as if we were sitting in court and you were testifying before a judge?

A. Absolutely.

Q. Okay. I'd like you to tell me, if you would, what litigation matters currently are pending that you're a party in other than this bankruptcy proceeding?

A. Well, I think that there's a main action, what I call the main action, which is a proceeding in San Diego, North County Court that involves myself and Mr. Stanly and a counter-suit by Mr. Stanly against me.

Q. Okay. Any --

A. There's also another -- well, there's two sort of indirect proceedings. One is a suit filed by Mr. Stanly against my wife, Madeleine Lopez, and then there's another proceeding where Mr. Stanly has filed suit against Noveon Systems, my employer.

Q. Okay.

A. As well as that, there is an appeal on a case of Union Bank versus Francis Lopez and Alan Stanly. And, of course, this proceeding, the voluntary bankruptcy proceeding. And that -- to my knowledge, that's it.

Q. And those are the currently pending items of litigation?

A. Yes.

Q. Other than the currently pending litigation, have you ever been involved in any civil litigation?

A. I was involved indirectly in the, I'd say, early to mid-nineties in litigation against my firm. I don't remember who the plaintiff was. My firm was Metro Consolidation Carriers, Inc., in Carson, California.

Q. What was the nature of that litigation?

A. Basically, it was a claim by a customer of Metro's that had to do with damages to merchandise.

Q. Were you named as a party in that action?

A. No, I was not.

Q. What was the nature of your involvement?

A. I was involved as president of Metro. And eventually what happened was Metro's cargo insurance carrier took over that case, and they made some settlement with the customer.

Q. Okay. So as far as you know, the matter is resolved by settlement?

A. Yes.

Q. Okay. Any other litigation that you've been involved in?

A. Well, there was a company called Pacific Carlsbad Partners that had a guarantee by myself and Mr. Stanly. Whether or not they actually filed suit, I'm not sure. They may have. That matter has been settled as far as I'm concerned.

Q. What do you mean as far as you're concerned?

A. Well, as far as I'm concerned, I settled with them. They wanted approximately half of the guarantee amount, and I settled the debt with that.

Q. Does that mean you paid it?

A. Yes.

Q. Okay. Do you recall when that was?

A. It would have been in the mid-2003 area.

Q. The litigation that you referred to with your company Metro, where was that pending?

A. That would have been somewhere in Los Angeles.

Q. Okay. Any other litigation that you can think of that you've been involved in?

A. There was litigation and I don't really remember the dates other than saying it was sometime in probably the 1995 area. There was litigation by myself and Mr. Stanly versus an insurance company, Mercury Insurance.

Q. Were you plaintiffs?

A. I believe so.

Q. What was the nature of that litigation?

A. It had to do with an accident where we were driving in a car together and somebody rear-ended us. And that didn't really go very far. The insurance company contacted me, and I settled with them.

Q. Okay. Is there any other litigation that you can think of that we haven't discussed?

A. No, not that I can recall at this time.

MR. KEEHN: Okay. I'm going to ask the reporter to mark as Exhibit Number 1 to the deposition the notice, and you have a copy of it in front of you. We'll just take a moment while she does that.

(WHEREUPON, Deposition Exhibit 1 was marked for identification.)

BY MR. KEEHN (RESUMING):

Q. Okay. And I'm going to ask you to look at Exhibit Number 1 and ask you if you've seen that before?

A. Where is Exhibit Number 1?

Q. Right here.

A. Oh, this copy right here?
Q. That copy is for you to take.
A. I believe it's a copy that I have. I brought the copy that I received from Mr. Hayes.
Q. Okay. It looks like you received it via facsimile transmission; is that correct?
A. Yeah. He e-mailed it to me.
Q. Okay. The notice has a number of documents that you were requested to produce, and I'm just wondering did you bring any documents that are responsive to that request?
A. I did bring documents; however, I would have to tell you that according to Mr. Hayes, there was a request on -- itemized as Number 1 under documents to produce referring to tax returns. And he told me that that was not required of me.
Q. That's accurate at the moment.
A. Okay. And then he also told me that there is a request for documents itemized as Number 7, documents supporting my claim that the involuntary petition was filed in bad faith.
Q. That's correct for the moment as well.
A. He said that was not also required.
Q. Your understanding in that regard is correct. My question to you is, did you bring

documents that were in your possession or control that are responsive to the other categories?

A. Yes, I did.

Q. May I see them, please.

A. Yes.

Q. You've handed me a stack of documents, Mr. Lopez, and my first question to you is, is this just one set of documents? You have no copies?

A. I have copies of -- I didn't bring them with me. I have my own copies of what I've provided you today.

Q. Okay. So we can have these marked as exhibits to the deposition then?

A. Absolutely.

MR. KEEHN: Thank you. We're going to take a break for moment while I look over this.

(WHEREUPON, there was a short break taken, after which Deposition Exhibits 2 through 16 were marked for identification and the deposition resumed as follows:)

BY MR. KEEHN (RESUMING):

Q. Mr. Lopez, as you know, we've copied and marked the documents you've provided here this morning as exhibits. My question to you is -- and I want you to refer to the Exhibit Number 1 categories. I'm looking at paragraph 2, any and all documents evidencing any and all payments you have made to any of the following persons during the time period of June 30, 2005, through the present. Do you see that? Have you now produced all of the documents that you have in your possession?

A. Yes. All the documents that I had in my files, I've produced.

Q. Okay. And in responding to this request, can you describe for me what you did to locate documents that might be responsive to the request?

A. I went through all my bank statements, and I also went through my files on each one of these vendors and miscellaneous files, and I got everything that I could find.

Q. Would it be accurate to say that you looked in every location available to you where you thought responsive documents might be located?

A. Yes, I did.

Q. Okay. I know this is going to be tedious, but we'll try and go through this quickly. I want to just verify that that's true with respect to payments made to Progressive Insurance?

A. That's correct.

Q. How about Coastal Community Insurance?

A. Yes.
Q. Quicken Platinum card?
A. Yes.
Q. Okaloosa Gas District?
A. Yes.
Q. Northwest Florida Daily News?
A. Yes.
Q. Allstate Floridian?
A. Yes.
Q. Texaco and Shell?
A. Yes.
Q. Bank of America?
A. Yes.
Q. Verizon Wireless?
A. Yes.
Q. Cox Cable?
A. Cox Communications, yes.
Q. Communications, yes. Union Bank of California?
A. Correct.
Q. BankCard Services?
A. Yes.
Q. Cingular Wireless?
A. Yes.
Q. Wayne Wise?

A. Yes.
Q. Valley Forge Life Insurance?
A. Yes.
Q. American Home Shield?
A. Yes.
Q. Citi Cards?
A. Yes.
Q. Household Bank?
A. Yes.
Q. American Express?
A. Yes.
Q. Fort Walton Beach Medical Center?
A. Yes.
Q. Okay. Now, going to Item Number 3, have you now produced all documents that evidence any payments that you have made for legal services from June 30, 2004, to the present?
A. Well, let me tell you about what I did there.
Q. Okay.
A. All the documents that I could find I -- in terms of cancelled checks and things I provided, I also provided you with a list of the payments that I'm aware of for legal fees during the time frame that you specified. I will tell you that there was a

major file that I have that has various legal bills in them, and I couldn't find that file. But I did have notes as to payments that I have made, and that's what I provided to you, and in addition, everything else I could find in my bank statements and things I have provided to you.

Q. I'm going to put all the documents we've just marked as exhibits, and I'm going to pass them over to you.

A. Okay.

Q. And the document that's been marked as Exhibit 2, it just appears to be somebody's summary?

A. That's my summary of payments.

Q. Is Exhibit 2 the summary you were just referring to?

A. That's correct.

Q. Okay. And this summary was compiled from what sources?

A. Scribbled notes, memory. There were a couple of transactions here that I know, as well as some of the other documents that I provided to you.

Q. Okay. So you are the author of Exhibit 2?

A. Yes.

Q. And it was prepared based on documentation in your possession and your memory?

A. And my memory, that's correct.
Q. And based on that, would you say that it is an accurate presentation of at least the payments that were made?
A. I believe so.
Q. And if I understand your testimony correctly, there may have been more payments?
A. You know, I can't say with 100 percent certainty that there weren't any more payments. These are the ones I have records of and that I have notes of.
Q. Okay. The lost file that you were referring to, when was the last time you saw it?
A. Oh, probably about seven or eight months ago.
Q. Do you remember where you saw it?
A. Yeah. It was in my house. I have file cabinet after file cabinet of stuff having to do with legal, and I know that there was one folder. What's in that folder is going to be, you know, statements primarily from Fischbach. But even if I found that, I'm not certain that there's anything new in there, other than his billings to me and whatnot. The payments that I've listed here, I believe, are accurate in terms of Fischbach.

Q. Okay. Do you have a written retainer agreement with the Fischbach and Fischbach firm?

A. I'm sure I do.

Q. Do you recall a written --

A. I'm sure that I did. That would have been in that file. I'm sure that I did sign a retainer agreement with Fischbach.

Q. Do you recall what the terms of that retainer agreement are insofar as when payments are required?

A. No.

Q. If you'd look on Exhibit 2, there's an entry there for October 20th, 2005, a $1,000 payment to Thomas Gorrill; do you see that?

A. Yes, I do.

Q. Do you recall when the services were rendered for which that payment was made?

A. Well, I know -- without giving you an exact date, I believe it was somewhere in the last quarter of 2003. I mean, that's the -- that may not be a hundred percent accurate, but I believe that he attended a hearing, and he had sent me a bill and there was, I would say, a minor dispute over the amount of the bill. And we finally came to terms as to what that bill would be. That payment reflects that.

Q. Okay. There is an entry here for a payment to Ron Noya; do you see that?

A. Yes, I do.

Q. When did you first engage Mr. Noya?

A. Well, let me talk this through so I can arrive at some kind of a date. Mr. Noya was engaged, first of all, to handle the lawsuit that your client filed against my wife. Secondly, I believe it was in December of '05, Mr. Stanly's company filed a lawsuit against Noveon Systems, and Mr. Noya was engaged for that action as well.

Q. Okay. Had you ever engaged Mr. Noya prior to June 30th, 2005?

A. I do not believe so, no. My first engagement of Mr. Noya followed the Stanley action against my wife.

Q. Okay.

A. And I believe that was -- I'm almost certain that was past June 30 of '05.

Q. The Fischbach and Fischbach firm, do they send you monthly bills?

A. You know, it's hit or miss. They had -- they were sending them for a while and then I know that I didn't receive some for a while.

Q. How about the first six months of 2005; did they send you regular monthly statements?

A. I don't believe that there was any regularity to the statements that he sent.

Q. All right. Let's move on to Category Number 4 in Exhibit 1, any documents evidencing any and all loan payments you have made to relatives during the time period of June 30, 2004 to the present. Have you now produced all of the documents that are responsive to that category?

A. Yeah. I don't have any documentation of any payments made to -- the relatives, right? Is that which one that was?

Q. Yes.

A. Number 4?

Q. Yes.

A. Right.

Q. Have payments been made during that time period?

A. I do not believe so. I think I borrowed from relatives, but I have not made any payments.

Q. Well, that would explain why there's no documents. How about Category Number 5; any documents evidencing any and all loan payments you have made to any person other than a relative during

the time period June 30, 2004 to the present?
A. I don't have any documentation of that.
Q. You have none?
A. No.
Q. Okay. Category Number 6, any and all documents which you believe support your claim that the judgement debt Stanly owes to you is subject to a bona fide dispute; have you produced --
A. I think that this was asked for previously, and what we did is produce the legal documents involving the Union Bank matter and the judgement and the appeal of that judgement.
Q. Okay. You produced some documents in response to a written request for production of documents; you recall that?
A. Yes.
Q. Okay. When I say -- when I ask you these questions here today, if you believe that the documents you've produced today in combination with documents you produced previously, please make that distinction for the record. I understand what you're saying.
A. Okay. I thought that's what I said, but that's what I meant. That was the gist of what I was saying.

Q. Okay. So between what you've brought today and what you've previously produced, we now have the whole universe of documents responsive to Category 6?

A. Well, I would say that the documentation related to that dispute -- and, you know, I'm not a lawyer so I'm not using the phrase "bona fide dispute" in a bankruptcy law context, but in a general definition context, I would say that the various information provided in the various cases involving myself and Mr. Stanly have all been provided to the Court.

Q. Okay.

A. Okay?

Q. So is that --

A. I have nothing new to provide in that vein.

Q. All right. And I'm interested in your comment that you're not using the term "bona fide dispute" in a technical bankruptcy sense. What do you mean? What do you understand the term to mean?

A. What I mean by the general sense of bona fide dispute is that there's a dispute as to whether or not I should pay anything regarding this from my point of view. I understand there's a judgement and whether or not that constitutes a lack of bona fide dispute in the bankruptcy court definition, I don't know. I can't say that.

Q. Okay. So you're using --

A. What I can say is if this thing is disputed, it's on appeal in California, and there's, you know, various documentation that shows that that's disputed.

Q. Okay.

A. Okay.

Q. Let's skip down to Category Number 8. Have you now produced any and all documents that you believe establish that the debt of $69.30, which you allegedly owed pre-petition to the Northwest Florida Daily News is disputed?

A. I have provided everything in my possession. There may be another document. I could not find it, but I am looking for it, and if I do find it, I'll expedite that to you through John Hayes.

Q. Thank you. Let's move to Category Number 9. Have you now produced any and all documents that you believe establish that the debt of $1,575, which you allegedly owe to petitioning creditor Alternative Resolution Center is disputed?

A. I have produced every document in my possession regarding that.

Q. Okay.

A. I do believe, however, that there may be additional documents in the possession of my attorney, Mr. Fischbach, that relate to this reported debt.

Q. All right. In responding to the document -- to the request for documents that are in the deposition notice, did you contact Mr. Hayes?

A. I did. I did have at least one or two communications with Mr. Hayes.

Q. Did you -- without telling me the substance of any of your conversation with Mr. Fischbach --

A. Fischbach or Hayes?

Q. Fischbach. You told me that Fischbach may have some documents responsive to Category 9, correct?

A. Yes.

Q. So what I'm trying to find out is what, if any, efforts did you make to have Mr. Fischbach produce such documents if, in fact, he has them?

A. Well, I had a conversation with Mr. Fischbach regarding this alleged debt, and I don't know how much I want to go into that conversation. But I'm not aware -- he may be in possession of some additional documentation regarding this matter. I'm not aware of it. I did talk to him about it, and he verified with me that there was no debt. And whether or not he has notes or any other documentation that involves that, I don't know.

Q. Other than something that may be in Mr. Fischbach's file and the documents you've produced here today as Exhibit Number 3, are there any documents that support your claim that the Alternative Resolution Center's obligation is in dispute?

A. There are no other documents in my possession.

MR. KEEHN: All right. Those are all the categories.

(WHEREUPON, Deposition Exhibit 17 was marked for identification.)

BY MR. KEEHN (RESUMING):

Q. All right. Mr. Lopez, I'm going to hand you what has been marked as Deposition Exhibit Number 17. I will tell you that this is an exhibit that was attached to a declaration and the answer to the involuntary petition filed in the bankruptcy court.

A. Okay.

Q. So the first question I have for you is, have you seen that before?

A. Yes.

Q. Did you authorize Exhibit A to be attached to the pleadings in your bankruptcy case identifying these entities as your list of creditors?

A. Well, Mr. Hayes requested that I provide him with something in writing as to the creditors, and that's what I did.

Q. So you are the author of Exhibit 17?

A. Yes.

Q. Okay. Tell me what the methodology was that you used to prepare Exhibit 17?

A. Well, I went through my records and came up with all of the companies or entities that I thought would be creditors in this case. And I listed them, and I put in, you know, their name, address, and approximate amount -- in some cases they were exact amounts -- but approximate amounts owed and just a short line about what kind of category that debt would fall into. And I had to go back -- I believe, this was at the time of June 30th so I had to go back and sort of extrapolate back in time.

Q. So you prepared Exhibit A at a point in time after June 30th, 2005?

A. Yes, sometime shortly after, but it was in connection with the response that was filed by Mr.

Hayes.

Q. Okay. So, then, it would be accurate to say that you prepared what we have as Deposition Exhibit 17 from your own personal records and memory?

A. Correct.

Q. You have to speak up.

A. Yes.

Q. Okay. Did you share the records that you used to compile Exhibit 17 with Mr. Hayes?

A. I did. I believe shortly thereafter he asked me for documents related to this, and I had sent them to him.

Q. All right. Do you know whether you sent the documents to Mr. Hayes before or after Exhibit A was actually attached to pleadings in the bankruptcy court?

A. I don't recall.

Q. All right. Take a moment and look through Exhibit 17, and when you've done that, I would like you to tell me if on looking at it today, you see anything on Exhibit 17 that is inaccurate as a reflection of your creditors as of June 30, 2005?

A. Inaccurate as to what?

Q. Whether, in fact, they were creditors or whether the amount is inaccurately stated?

A. No. I'm not -- I would not be able to glance at the amounts and say that they're inaccurately stated --
Q. Okay.
A. -- off the top of my head. But, you know, I don't see any reason to believe that these are not creditors as of June 30th.
Q. You've just finished looking through Exhibit 17, and you're satisfied that every entity on Exhibit 17 was, in fact, a creditor of yours as of June 30, 2005?
A. Yes, I believe so.
Q. Okay. The next question: Take a look again and see if the benefit of hindsight would tell you that there's any additional creditors that you had as of June 30, 2005, that are not on Exhibit 17?
A. I know that I had borrowed some money from my father, and, you know, my understanding at the time was not to put relatives in here so that's not in there. As of June 30th, it's entirely possible there may have been one or more additional creditors that I wasn't aware of or I didn't have a record of.
Q. Well, anything's possible. What I want you to do is just take a moment and look through Exhibit 17 --

A. Uh-huh (indicating affirmatively).
Q. -- and having done that, tell me if there's anything that you can think of as you sit here today, any other creditor other than family members, that are not reflected on Exhibit 17.
A. As of June 30th, '05, I wouldn't be able to tell you that today looking at this.
Q. So would it be accurate to say that after you've had the benefit of looking at Exhibit 17 here today, you cannot as you sit here today think of any creditors other than family members that you owed money to on June 30th, 2005, that are not reflected on Exhibit 17?
A. No. But I'm not disputing that it's entirely possible that I overlooked a couple of creditors.
Q. Okay. Anything's possible. Let's talk about your father for a moment. That would be Fredrick Lopez, correct?
A. That's right.
Q. Do you remember on May 9th, 2005, that you participated in a proceeding very much like this, only it was a judgement debtor's exam?
A. Right. I remember that.
Q. All right. I'm going to refer to the

judgement debtor's exam, and when I do, I'll be referring to that proceeding. Is that all right with you?

A. That's fine.

Q. Okay. You mentioned in the judgement debtor's exam a $20,000 loan that you had taken from your father; do you remember that?

A. That's entirely possible, yes.

Q. Well, that's not -- do you remember that testimony?

A. Do I remember as to the exact amount of $20,000 that I said at that time?

Q. Right.

A. No.

Q. Does that sound accurate to you?

A. It sounds entirely possible.

Q. Okay. Do you recall the purpose for which the money was borrowed?

A. No.

Q. Do you recall the time or times in which the money was borrowed?

A. No, although, you know, I will tell you that the bulk of money that I may have borrowed from my father would have to do with supporting legal fees.

Q. Is there any other purpose you can recall as you sit here today for which you borrowed money from your father prior to June 30th, 2005?
A. No.
Q. Have you borrowed money from your father since June 30th, 2005?
A. I have.
Q. Do you know the approximate amount?
A. The approximate amount is $35,000.
Q. Do you recall the date or dates when those loans were taken?
A. No.
Q. Do you recall the purpose of the loans?
A. Just to cover my general expenses and to pay for legal fees.
Q. Okay. When you say general expenses, what do you mean?
A. Well, I mean, you know, that the legal actions that I've been involved in over the last three years have been just a financial drain on myself and my wife. And I would say that that's the primary consideration of any loan I got from my father.
Q. All right. I'm curious because you said general and legal.

A. Uh-huh (indicating affirmatively).

Q. And I understand the legal aspect of it. What did you have in mind when you said general expenses?

A. I'm just -- what I'd say -- when I say general, I'd say there may have been some other things here and there that I needed help paying on, but that's all. I can't say that, oh, I borrowed $20,000 on this date, and it went to go to pay Mr. Fischbach. You know, it may have been I needed, you know, $1,500 for something else. It may have been --

Q. Okay. Of all the money that you've borrowed from your father, and I'm talking about the balance that was owed as of June 30 and any other balances borrowed later, has any of that been repaid?

A. No.

Q. Okay. Mike Lopez, do you recognize that name?

A. Yes.

Q. Is that your brother?

A. Right.

Q. Have you borrowed money from him?

A. I borrowed money from him in connection with a -- there was a proceeding in California, and I had a court reporter fee or something, and they needed a credit card to put it on right away. So he -- I didn't have a credit card on me that would pay that and so he used his credit card, and I reimbursed him.

Q. All right. I can tell you that you testified in the judgement debtor's exam that you had borrowed some money from your brother. Is that incident that you've just described now the same borrowing that you were referring to --

A. Yeah, to the best of my recollection.

Q. Okay. And the judgement debtor's exam was May 9th, and you testified at that time that the money was still owed to your brother; is that accurate to your recollection?

A. It may have been. There was a deposition of Mr. Stanly, and what I recall is the attorney told me that they would handle the fee and then I would just, you know, pay them. And at the last minute, they gave me a phone call and said, no, the reporter needs a credit card right now. So that was the connection. And then I would say, you know, within a short time period after that I paid him back.

Q. Okay. Do you know whether you paid him back before or after June 30th, 2005?

A. No. I'm not positive of that.

Q. You're not positive?
A. Not positive.
Q. Not positive one way or the other?
A. No. I would say that I would be surprised if it took me longer than a month to pay him back. It was shortly thereafter, but I'm not certain of the dates.
Q. Okay. Now, we're going to go back and get just some background information from you, Mr. Lopez. I'd like to know, first of all, have you ever been in the military?
A. No, I have not.
Q. Okay. You had a fax transmission from Mr. Hayes that has the deposition notice on it.
A. Uh-huh (indicating affirmatively).
Q. Do you recall when you received that?
A. Well, I don't. He e-mailed this to me, and I don't recall. I know that I was missing some of the pages so then I finally got the -- I think I was missing either page 1 or page 2, and I didn't get that until the day before yesterday.
Q. Okay.
A. But I don't really remember. I would say maybe a week ago.
Q. Maybe a week ago?

A. Yeah.

Q. All right. From the time that you found out that the deposition was going forward today to the present, have you talked about the deposition with anyone other than Mr. Hayes?

A. I may have mentioned that I have a deposition, but as far as any details about the deposition, no.

Q. Okay. You've mentioned in some of your -- well, let me strike that, and I'll come back to that a little later. Can you give me a summary of your educational background?

A. Yeah. I went to -- my father was in the military. I went to high school in Japan and graduated from high school in Japan. I moved to California in about 1979. I attended the University of California San Diego and graduated from UCSD in 1984.

Q. What was your degree?

A. I had a BA, double major in economics and international relations.

Q. It says you graduated in 1984. Have you attended any postgraduate curriculum?

A. No. I applied to, but I did not.

Q. What did you apply to?

A. I had -- I was accepted to Vanderbilt School of Law, and I never made it. I was also accepted to USC School of Law and School of Business.

Q. Okay.

A. But I never -- I never made it. I ended up working and never made it.

Q. Funny how that happens. Okay. Starting with 1984 when you graduated from UCSD and moving forward, can you give me a summary of your employment history?

A. Well, in 1985, I started working for a company called Roadway Express that at the time was the number one or number two ranked carrier in the less-than-truckload industry at the time. And I stayed with them through 1992 so I was there with them for seven years and probably had five or six different managerial positions with them during that time frame.

Q. Can you describe the managerial positions that you held? What were your duties?

A. In a supervisor job where I managed what they call "dock workers" on a dock in a distribution facility. And then I had an operations manager job where I handled approximately 5 to 10 supervisors and 150 -- up to 150 employees. And then I had more of a senior operations manager job where my duties included supervising anywhere from 9 to 15 supervisors and up to 250 employees.

And then after that, I was an operations manager for the Southern District of California. The Southern District of California had 22 freight terminals in Southern California and Hawaii, and I was responsible for the management of the operations of those facilities.

After that, and we're talking about 1992 to approximately 1995, I had a company that I was president of named Metro Consolidations, and that was in Carson, California. And that company basically dealt with what's called distribution -- pickup and distribution of less-than-truckload freight. It also had consolidation services that we provided for Nationwide Delivery.

Q. You were the president of that company?

A. That's right.

Q. Were you also -- was it a corporation?

A. It was a corporation.

Q. Were you a shareholder?

A. I was a shareholder. Initially, I was a -- well, I don't remember exactly the exact percentage. Initially when the corporation was formed, there were, I would say, somewhere between five and eight shareholders, to the best of my recollection. And then approximately in 1993 or '94, I bought out the remaining shareholders, and I became the 100 percent shareholder.

Q. Do you remember the names of the remaining shareholders that you bought out?

A. I only remember the name of one, Tim Watkins. He was a former Roadway employee that worked with me in a management capacity, and the two of us started that business together.

Q. Do you know where Mr. Watkins resides today?

A. I absolutely have no idea where he resides. I believe he's still in California, but I'm not certain.

Q. Do you have a city where he once resided?

A. I know that after I bought out Mr. Watkins and the other shareholders, he took a job with a company called Roadway Package Service. And I believe that their location was in Ontario, California, but I really lost track of him after that.

Q. Okay. In 1995, what happened?

A. Well, in 1995 into 1996, I formed a company called Prism Freight Services, and I was president of that. And that did some of what Metro did but on a different -- sort of a different non-asset based method. What I mean by that is we really started moving away from owning a bunch of trucks and having to deal with the maintenance of trucks and things like that and started moving toward a less asset-based concentration and more what we call brokerage concentration.

Q. So you would broker transportation services for other people?

A. Yeah. Really what the intent was to move away from, you know, having a bunch of trucks, making pickups and having to deal with the truck payments and maintenance of trucks and all that and moving more toward a pure brokerage operation.

Q. What was your -- were you a shareholder of Prism?

A. A hundred percent.

Q. A hundred percent. Were you also its president?

A. Yes.

Q. Did you hold any other offices?

A. I couldn't tell you with certainty. I may have been a secretary or, you know, I may have been president and secretary, but I don't remember.

Q. Were you also a director?

A. Yes.

Q. Did there come a time when you held less than a hundred percent of the shares?

A. In Prism Freight Services?

Q. Correct.

A. Not to my knowledge.

Q. Okay. And how long were you employed with Prism Freight Services?

A. That would have been two years, two to three years, somewhere in that range.

Q. So somewhere up to 1999?

A. No, because we were talking about nineteen-ninety -- we're talking about 1992 to 1995, maybe early '96 for Metro. And you're talking about Prism Freight really starting around 1995.

Q. In '95?

A. And maybe running in '95, '96 and maybe even part of 1997, to the best of my knowledge.

Q. All right. What happened in 1997?

A. Well, in 1996 -- well, I met Mr. Stanly, I believe, in 1993 so we'd been working on this software application together. And I would say by probably early '96, we decided to start marketing the software that we built together. And what really the evolution of it is, it started -- once we started marketing it, it looked like there would be a lot of potential. And at a certain point in time, I decided that it wasn't worth my time to invest more of my time in Prism Freight Services so I sort of scaled that down.

Q. When was that?

A. I would say that would be in the 1996, 1997 period.

Q. Okay. And when you scaled down your involvement in Prism, what else did you do, if anything?

A. What else did I do in terms of what?

Q. Employment.

A. Like I said, when I scaled that down, Mr. Stanly and I were marketing the software through an entity we called Prism Logistics. And when that started producing income, then really -- I don't remember how long I actually continued to run Prism Freight Services. It may have been up to a year at that point.

Q. Okay. And how long -- did you gradually shift your attention from Prism Freight Services to Prism Logistics?

A. Yes.

Q. Did there come a time when your entire professional or working life was devoted to Prism Logistics?

A. Yes.

Q. When was that?

A. That would have been -- to the best of my knowledge, that would have been sometime in 1997.

Q. Okay. Was Prism Logistics a corporation?

A. It didn't start out being one. It was a d/b/a, and my recollection of it is that Prism Freight Services lent the money to Prism Logistics. Prism Logistics started marketing the software. And then somewhere after that, Mr. Stanly and I decided to use a dormant corporation that he had called Computer Handyman, and we ran that operation under Computer Handyman after that point.

Q. When you say Prism Logistics was a d/b/a, whose d/b/a was it?

A. I don't remember.

Q. Okay.

A. I actually looked and I couldn't find the documentation on it. It may have been Prism Freight Services, or it may have been my own name. What I do recall about it is that my wife actually went down and did all the paperwork. She went down to the -- whatever the appropriate state agency was, and she filed the d/b/a.

Q. Okay. When did the work through Computer Handyman begin?

A. I would say that that really was late '96 into '97 or '97. Certainly 1997. Whether there was anything at all prior to that, it's possible.

Q. Was Computer Handyman a corporation?

A. Yes.

Q. Were you a shareholder?

A. Originally, Mr. Stanly set up Computer Handyman in 1994, I believe, and he explained to me that it was dormant. And when we decided that our new enterprise should be under a corporate shell, you know, one of the choices we were faced with was, okay, well, this is a bootstrap operation, do we want to go ahead and formally set up a new corporation and all that or use Mr. Stanly's dormant corporation. So we decided to use his dormant corporation solely on the fact that it existed and it hadn't done any business, and we'd save the money and reincorporate into something else.

Q. And all of this was in late '97?

A. I would say that this really spans a time frame of 1996 and 1997.

Q. Okay. So sometime in that time frame you began doing business through the Computer Handyman corporation?

A. Yeah. We still kept the name Prism Logistics.

Q. So was it a d/b/a of Computer Handyman?

A. It was. Whether or not it was actually filed, I don't know.

Q. Okay.

A. I don't remember.

Q. So if Mr. Stanly had set up Computer Handyman, I take it, in late '97 when it was being activated for the Prism-related business, he was the 100 percent shareholder?

A. I wouldn't say late '97. I said sometime in 1997. It could have been late '96 into '97. Originally, as of 1994, he was the sole shareholder.

Q. Did there come a time when you held shares?

A. Yes.

Q. When was that?

A. That would have been, to the best of my recollection, sometime in early 1997.

Q. And do you recall the percentage of the shares that you held?

A. Fifty percent.

Q. Do you recall what, if anything, you paid for those shares?

A. No, other than the amount that was -- I know that there was some amounts that were paid by Prism Freight Services to get the thing going, like it paid for some ads and things like that. And I may have contributed some additional funds. They weren't significant. There's a number in my head of $600 bucks, but I don't -- I don't really remember. I know it wasn't any real significant amount.

Q. Do you recall whether the shares were issued to you by the corporation or transferred to you by Mr. Stanly?

A. I believe they were issued by the corporation.

Q. Okay. And how long were you employed with -- if I asked you this question, I apologize, but I'll start over. What, if any, offices did you hold in Computer Handyman?

A. Well, I think when we first started out, he was president and I was vice-president and we were cochairmen. And then somewhere down the line, we changed our titles, and I was CEO and he was president and chief technical officer.

Q. Were you ever a director?

A. We were both directors.

Q. Were there other directors?

A. I know that we had discussed it. I don't think we actually -- I think we had some names down, but I don't think we actually had another director. It was just the two of us.

Q. Okay. And I take it you're not working for Computer Handyman doing buisness as Prism Logistics any longer?

A. No.

Q. When did that end?

A. Well, technically, it ended sometime in the late nineties where Computer -- the whole name of Computer Handyman was changed. It was changed to Prism Advanced Technologies.

Q. It was the same corporation, though, was it not?

A. Yeah.

Q. All right. And you continued on as an officer?

A. Yeah.

Q. But you're not employed by Prism Advanced Technologies at the moment, correct?

A. No.

Q. When did your employment with Prism Advanced Technologies end?

A. That's hard for me to answer because, you know, at a certain point in time there was a receiver appointed for the corporation, and it was Richard Kipperman. And he basically, after a couple of months after his employment, he shut down the operations of the corporation. And I remember that date distinctly. That was July 8th, 2003. Now, were the operations shut down in terms of my employment with the corporation? I don't know. You know, I don't know whether or not I was still considered as an officer after that or what. I believe I probably technically would be. But in terms of Mr. Stanly or myself submitting a resignation after that time, I don't think either one of us did.

Q. So you've never submitted a resignation?

A. For Prism Advanced Technologies?

Q. Yes, sir.

A. I don't recall. I mean, it's possible, but I don't believe so.

Q. All right. But there did come a time when you stopped going to work there?

A. Oh, yeah.

Q. When was that? Was that the July 8th date?

A. The July 8th date was pretty much -- you know, that was pretty much it. There was a period of time before that because of problems we had in our offices where going to work at the office wasn't happening by anybody. But in terms of doing work for Prism, that stopped sometime in July of 2003. I need to take another quick break.

MR. KEEHN: Sure.

(WHEREUPON, there was a short break, after which the court reporter read back the last question and response and the deposition resumed as follows:)

BY MR. KEEHN (RESUMING):

Q. Okay. Have you been employed by anyone other than Prism Advanced Technologies since July of 2003?

A. No. I mean, other than -- well, scratch that. Noveon Systems and I think -- no, not other than that. And also self-employed. I've done a couple of things for some money on the side but --

Q. Self-employed, a couple of things on the side, what exactly does that mean?

A. Well, I did this little thing with -- and I really abandoned it pretty quickly, but I got an insurance license and did some insurance sales, just

sort of a sideline to bring extra income in.
Q. When did you get the insurance license?
A. Let me check. I might have it with me. Hold on. It looks like I don't have it with me. My guess is sometime around late spring, early summer of 2005 maybe. Really, it was one of those things where I really didn't put much into it. I got the license and I tried a couple of things, and I quickly abandoned it.
Q. So you're not actively pursuing that activity at the moment?
A. Not at the moment.
Q. What exactly --
A. I mean, it's available to me if I want to.
Q. What exactly are you licensed to do?
A. It's a life, health, annuities, variable annuities.
Q. Is the license issued by the State of Florida?
A. Yeah.
Q. Okay. Other than the insurance license issued by the State of Florida and any driver's licenses that you may have held, have you ever held a license of any kind?
A. What do you mean?

Q. I license issued by any governmental entity?
A. You mean personally?
Q. Yes.
A. Other than a driver's license and that license? Boy, I don't know. I mean, ever?
Q. Ever?
A. Not to my knowledge.
Q. Okay. All right. When did you first become employed by Noveon Systems?
A. That would have been in July, I'd say the latter half of July '03.
Q. We know from records on file with the State of Florida that in March of 2005 you owned 50 percent of the stock of Noveon Systems; do you recall that?
A. No. I don't recall that at all.
Q. You don't recall filing a document with the State of Florida --
A. That showed that I owned 50 percent?
Q. That's correct.
A. No. I don't recall that.
Q. That comes as a surprise to you?
A. Yes, it does.
Q. Okay. So if there's something that purports to be your signature on that document, would

it be your testimony that it is not your signature?
A. No. I'm not saying that. I'm just -- that's a surprise to me because when Noveon was formed, it was formed entirely with a contribution from my wife. And to my knowledge, she's owned -- she owns 100 percent of that company.
Q. When was Noveon Systems formed?
A. It was formed, I believe, in May or June of 2003.
Q. It is a corporation, is it not?
A. It is.
Q. In what state is it incorporated?
A. Delaware.
Q. I'm sorry?
A. Delaware.
Q. Delaware. Has Noveon Systems ever maintained an office in the State of Delaware?
A. No. It had an agent in the City of Delaware, but no formal office. Noveon really hasn't had a formal office anywhere.
Q. Okay.
A. It's really what I call a virtual company.
Q. Do you have any knowledge as to why it was formed in the State of Delaware as opposed to any other state?

A. Yeah. Number one, ease of filing; number two, quickness of filing; number three, reasonable filing fees; number four, lack of -- not lack of, but less administratively burdensome as opposed to some other states that you may file a corporation.

Q. Well, in May --

A. That was my idea of it anyway.

Q. In May through July of 2003 when it was formed, you resided in the State of California, did you not?

A. Yes.

Q. Okay. What, if any, role did you play in the formation of Noveon?

A. It was pretty minimal. I mean, I basically wanted to start up another company, and my recollection is that my wife had some money in stock, and we used that to form it. And at the time there was a degree of flux at Prism, and so I formed it with the idea of pursuing the -- or continuing in the freight software business. Now, I formed this at about the same time that your client formed his company, ETA, because I imagine he had exactly the same thoughts.

Q. And what do you imagine those thoughts were?

A. Those thoughts were that, you know, whether or not Prism would continue was a question mark, and that we each had decided that it would probably happen that we'd move out on our own with a new entity.

Q. At the time that Noveon was formed, what were your duties at Noveon?

A. At the time it was formed, nothing. There was really no duty other than getting documents together and having an attorney file paperwork.

Q. Have you ever been an officer of Noveon Systems?

A. Yes. I was at one time.

Q. During what period of time were you an officer?

A. I believe from the inception until, my guess would be late '04 through mid '05.

Q. Were you removed as an officer or did you resign?

A. No. I resigned and took another --

Q. What prompted you to resign?

A. You know, I just had some advice -- I had some advice from attorneys, and I took that advice, without going into detail about it.

Q. Okay. You mentioned in some of the early testimony you gave here today that Noveon is your employer now; do you remember that testimony?

A. Yes, I do.

Q. And in what capacity are you now employed by Noveon?

A. Well, what I do is I liaison with customers to figure out what they want in terms of work and then accommodate them, schedule work and get the work done.

Q. Do you have a title?

A. General manager.

Q. Since your resignation in 2005, have you ever held an office in Noveon?

A. No.

Q. Have you ever been one of its directors?

A. Have I ever been a director?

Q. Yes.

A. At any time?

Q. At any time, yes.

A. At any time, yes.

Q. From what period?

A. From the inception period I believe I was a director through the resignation. Whether or not I'm still a director, I'm not sure actually.

Q. So as you sit here today, you can't recall whether you resigned as a director as well?

A. Yeah. I know I resigned the position as an officer, but I'm not positive on the director.

Q. Since you've resigned as an officer, have you attended any directors' meetings?

A. No.

Q. Since you've resigned as an officer, do you recall signing any memorandum of directors' action taken without a meeting?

A. No.

Q. Okay. When did you begin working at Noveon?

A. You already asked me that, I think. Didn't you ask me when --

Q. I asked you what role you played in the organization and if you had been an officer.

A. No. You asked me whether -- you know, when I actually started working for Noveon, performing work or duties for Noveon, and I told you that that would have been in mid July to the end of July of '03 period.

Q. Okay. When you first started working for Noveon, what services did you provide?

A. Essentially a sales capacity, liaison -- I call it liaison, basically customer contact, scheduling of work and that type of thing.

Q. Is there any difference in the work that you're performing for Noveon today than the work that you performed when you first began working for Noveon?

A. Yeah. I would say it's scaled down quite a bit, but that's really -- you know, a lot of that's because of the nature of the business is scaled down quite a bit.

Q. Okay. As you sit here today, about on average how many hours per week do you devote to your services for Noveon?

A. There is a great deal of -- what's the right word -- flux, in terms of the hourly per week. It really depends. There's some weeks where I may put in 10 hours, and there are some weeks where I put in 50 hours.

Q. Okay. Let's go back to the point of beginning with your employment with Noveon. How were you compensated for your services at that point in time?

A. Well, I signed a lease agreement of my intellectual property of Noveon, and I was compensated for that. And after that, I was -- I should say from the beginning, I was on a profit-sharing plan with Noveon where I'd get a percentage of the profits.

Q. So other than the lease payments you've described and profit-sharing entitlements, do you receive any compensation from Noveon?

A. No.

Q. Have you ever?

A. No.

Q. Would it be accurate to say that from the beginning of your providing services for Noveon through today, the only categories of compensation that you received from Noveon are for the lease that you've described and profit sharing?

A. Yes.

Q. Okay.

A. I mean in terms of my understanding of the word "compensation."

Q. Well, what is your understanding of the word "compensation"?

A. Compensation would be monies given in exchange for services rendered.

Q. That's the meaning that I had in mind.

A. Okay.

Q. So we're on the same wavelength.

A. All right.

Q. Have you ever collected a license fee from Noveon?

A. Yes.

Q. Do you consider that the same as the lease payment you just described?

A. I didn't say a lease payment. You did. I said it was a --

Q. No. You indicated you leased intellectual property --

A. Licensed is what I said.

Q. Okay.

A. She can read it back.

Q. Did you mean to say license? And if I heard lease, you meant to say license?

A. License.

Q. Okay. So whenever I used the word "lease," your responses were --

A. License.

Q. -- with reference to a license fee?

A. I don't know how much difference it makes.

Q. Okay. Is that license in written form?

A. Yeah.

Q. Okay. Where is that license?

A. Where is the license?

Q. Yeah. Where is the document that embodies